SUPPLEMENT TO THE NINTH EDITION

OF THE

REVISED STATUTES

OF THE

STATE OF NEW YORK.

1896.

Containing all the General Legislation of 1896, including the Amendments to the Civil, Criminal and Penal Codes.

EDITED BY

CHARLES A. COLLIN,

A COMMISSIONER OF STATUTORY REVISION FROM 1889 TO 1895.

1896

BANKS & BROTHERS

NEW YORK ALBANY, N. Y.

PREFACE.

Lawyers will save time and trouble if they will accustom themselves to using Part IV of this volume, pp. 3743–3976, for the purpose of discovering amendments and repeals in 1896 of any of the statutes set out in the first three volumes.

For instance: A lawyer has before him section 44 of the Railroad Law as amended to January 1, 1896, in Volume 2 of this edition, at page 1276, and he desires to know whether that section has been amended or repealed in 1896. Turning to Part IV of this volume, and following the subsidiary page references between the parallel lines at the top of each page, he will find "R. S., 9th ed., p. 1276" on page 3830 of this volume, and there he will find section 44 of the Railroad Law set forth as amended by Laws 1896, chapter 333, taking effect April 20, 1896. If section 44 had not appeared under subsidiary page 1276, he might rely on its not having been amended or repealed in 1896.

In like manner he will find in the index to this volume similar indications of amendments and repeals, some topics like "Elections" being entirely rewritten and presented complete in this volume, including appropriate references to the first three volumes for all provisions there contained which remain in force.

CHARLES A. COLLIN.

32 Nassau St., New York.

October 12, 1896.

State of New York,
Office of the Secretary of State, } ss.:

I, John Palmer, Secretary of State, certify that so much of the matter contained in the text of this edition of the Revised Statutes as purports to be a copy thereof, is a correct transcript of the text of the Revised Statutes, as originally published under the authority of the State, except such typographical errors in the original as have been corrected in the copy, and except such parts as have been altered by acts of the Legislature, and that with respect to such parts it conforms to the acts by which such alterations have been made.

In Witness Whereof, I have hereto set my signature, at the city of Albany, this second day of July, 1896.

JOHN PALMER,
Secretary of State.

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PART I.

THE REVISED GENERAL LAWS

Enacted by the Legislature of 1896.

THE ELECTION LAW,

As amended to the commencement of the session of 1897.

L. 1896, ch. 909 — An act in relation to the elections, constituting chapter six of the general laws.

[Became a law May 27, 1896, taking effect June 16, 1896.]

CHAPTER VI OF THE GENERAL LAWS.

The Election Law.

Article I. Times, places, notices, officers and expenses of elections. (Sections 1 to 19.)
II. Registration of electors. (Sections 30 to 36.)
III. Primaries, conventions and nominations. (Sections 50 to 66.)
IV. Official and sample ballots, instruction cards and stationery. (Sections 80 to 89.)
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ARTICLE I.

Times, Places, Notices, Officers and Expenses of Elections.

Section 1. Short title.
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3. Time of opening and closing polls.
4. Filling vacancies in elective offices.
5. Notice of elections.
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12. Appointment and qualification of election officers in cities.
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16. Ballot boxes.
17. Voting booths and guard-rails.
18. Payment of election expenses.
19. Delivery of election laws to clerks, boards and election officers.

Section 1. **Short title.**— This chapter shall be known as the election law.

§ 2. **Date of general election.**—A general election shall be held annually on the Tuesday next succeeding the first Monday in November.

§ 3. **Time of opening and closing polls.**— The polls of every general election, and, unless otherwise provided by law, of every other election shall open at six o'clock in the forenoon and shall close at five o'clock in the afternoon. There shall be no adjournment or intermission until the polls are closed.

§ 4. **Filling vacancies in elective offices.**—A vacancy occurring before October fifteenth of any year in any office authorized to be filled at a general election, shall be filled at the general election held next thereafter, unless otherwise provided by the constitution, or unless previously filled at a special election. Upon the failure to elect to any office, except that of governor or lieutenant-governor, at a general or special election, at which such office is authorized to be filled, or upon the death or disqualification of a person elected to office before the commencement of his official term; or upon the occurrence of a vacancy in any elective office which can not be filled by appointment for a period extending to or beyond the next general election at which a person may be elected thereto, the governor shall make proclamation of a special election to fill such office, specifying

the district or county in which the election is to be held, and the day thereof, which shall be not less than twenty nor more than forty days from the date of the proclamation. A special election shall not be held to fill a vacancy in the office of a representative in congress unless such vacancy occurs on or before the first day of July of the last year of the term of office, or unless it occurs thereafter and a special session of congress is called to meet before the next general election, or be called after October fourteenth of such year; nor to fill a vacancy in the office of state senator, unless the vacancy occurs before the first day of April of the last year of the term of office; nor to fill a vacancy in the office of a member of assembly, unless occurring before the first day of April in any year, unless the vacancy occurs in either such office of senator or member of assembly after such first day of April and a special session of the legislature be called to meet between such first day of April and the next general election or be called after October fourteenth in such year. If a special election to fill an office shall not be held as required by law, the office shall be filled at the next general election.

§ 5. **Notices of elections by secretary of state and county clerk** — The secretary of state shall, at least three months before each general election, make and transmit to the county clerk of each county, the board of police commissioners of the city of New York and the board of elections of the city of Brooklyn, a notice under his hand and official seal, stating the day upon which such election shall be held, and stating each officer, except city, village and town officers, who may be lawfully voted for at such election by the electors of such county or any part thereof. If any such officer is to be elected to fill a vacancy, the notice shall so state. The secretary of state shall forthwith, upon the filing in his office of the governor's proclamation ordering a special election, make and transmit to each county clerk, the board of police commissioners of the city of New York and the board of elections of the city of Brooklyn, a like notice of the officers to be voted for at such special election in such county or any part thereof, and cause such proclamation to be published in the two newspapers published in such county having the largest circulation therein, at least once a week until such election shall be held. Each county clerk shall forthwith, upon the receipt of either such notice, file and record it in his office, and shall cause a copy of such notice to be published once in each week until the election therein specified in the newspapers designated to publish election notices. He shall also publish

as a part of such notice, each city, village and town officer who may lawfully be voted for at such election by the electors of such county or any part thereof.

§ 6. **Notice of submission of proposed constitutional amendments or other propositions or questions.**— Every amendment to the constitution proposed by the legislature, unless otherwise provided by law, shall be submitted to the people for approval at the next general election, after action by the legislature in accordance with the constitution; and whenever any such proposed amendment to the constitution or other proposition, or question provided by law to be submitted to a popular vote, shall be submitted to the people for their approval, the secretary of state shall include in his notice to the county clerk, the board of police commissioners of the city of New York, and the board of elections of the city of Brooklyn, of the general election, a copy of such amendment, proposition or question, and if more than one such amendment, proposition or question is to be voted upon at such election, such amendment, proposition or question, respectively, shall be separately and consecutively numbered. If such amendment, proposition or question is to be submitted at a special election, the secretary of state shall, at least twenty days before the election, make and transmit to each county clerk, the board of police commissioners of the city of New York, and the board of elections of the city of Brooklyn, a like notice. Each county clerk shall, forthwith upon the receipt of such notice, file and record it in his office, and shall cause a copy of such notice to be published once each week until the election therein specified, in the newspapers designated to publish election notices.

§ 7. **Publication of concurrent resolutions, proposed constitutional amendments and other propositions.**— The secretary of state shall cause each concurrent resolution of the two houses of the legislature, agreeing to a proposed amendment to the constitution, which is referred to the legislature to be chosen at the next general election of senators, to be published once a week for three months next preceding such election, in two newspapers published in each county, representing the two political parties polling the highest number of votes at the then last preceding general election, and in one additional newspaper published in each county for every one hundred thousand people in such county, as shown by the then last preceding federal or state enumeration. Such additional newspapers shall be selected by the secretary of state with reference to making such publication in newspapers having the largest circulation in the county in which they are published. If such

resolution does not state that such proposed amendment is so referred to such legislature, the secretary of state shall publish, in connection with the publication of such concurrent resolution, a statement that such amendment is referred to the legislature to be chosen at the next general election. The secretary of state shall cause such proposed amendment to the constitution or other proposition or question, which is by law to be submitted to the electors of the state at a general or special election, to be published for a like period before such election in newspapers selected in like manner, together with a brief statement of the law or proceedings authorizing such submission, the fact that such submission will be made and the reading form in which it is to be submitted. If such proposed amendment or other proposition or question is to be submitted at a special election, to be held less than three months from the time of appointing it, the first publication in each newspaper shall be made as soon as practicable after such appointment, and shall continue once in each week to the time of the election.

§ 8. **Creation, division and alteration of election districts.**— Every town or ward of a city not subdivided into election districts shall be an election district. The town board of every town containing more than four hundred electors, and the common council of every city except New York and Brooklyn, in which there shall be a ward containing more than four hundred electors, shall, on or before the first day of July in each year, whenever necessary so to do, divide such town or ward respectively into election districts, each of which shall be compact in form, wholly within the town or ward, and shall contain respectively as near as may be, four hundred electors, but no such town or ward shall be again divided into election districts until, at some general election, the number of votes cast in one or more districts thereof shall exceed six hundred; and in such a case the redivision shall apply only to the town or ward in which such district is situated. If any part of a city shall be within a town, the town board shall divide into election districts only that part of the town which is outside of the city. No election district including any part of a city shall include any part of a town outside of a city. A town or a ward of a city containing less than four hundred electors may, at least thirty days before the election or appointment (where appointment is directed to be made by law) of inspectors of election of such town or ward, be divided into election districts by the board or other body charged with such duty when, in the judgment of such board or

body, the convenience of the electors shall be promoted thereby. The creation, division or alteration of an election district outside of a city shall take effect immediately after the next town meeting, and at such next town meeting inspectors of election shall be elected for each election district as constituted by such creation, division or alteration. If the creation, division or alteration of an election district is rendered necessary by the creation or alteration of a town, or ward of a city, it shall take effect immediately, but a new town or ward shall not be created, and no new town or ward shall be subdivided into election districts between the first day of August of any year, and the day of the general election next thereafter. If inspectors are not elected or appointed for such district outside of a city before September the first next thereafter, the town board of the town shall appoint four inspectors of election for such district. On or before the first day of July in the year eighteen hundred and ninety-seven the board of police commissioners of the city of New York and the board of elections of the city of Brooklyn, shall divide such cities respectively into election districts upon the basis of the registration of electors for the general election held in such cities in the year eighteen hundred and ninety-six. Each such election district so established shall contain as near as may be four hundred electors. Each election district shall be compact in form, and in the city of New York, wholly within one assembly district, and in the city of Brooklyn, wholly within one ward. No election district shall contain portions of two congressional or assembly districts. Such election districts so established shall not again be changed until at some general election for the office of governor, the number of registered voters therein shall exceed six hundred, except where changes are made necessary by a change in the boundaries of congressional or assembly districts or ward lines, provided, however, that when the number of registered voters in any election district shall, for two consecutive years, be less than two hundred and fifty, such district may be consolidated with contiguous election districts in the discretion of such boards respectively. If a town shall include a city, or a portion of a city, only such election districts as are wholly outside of the city shall be deemed election districts of the town, except for the purpose of town meetings.

§ 9. **Maps and certificates of boundaries of election districts.**— When a ward of a city or an assembly district within a city shall be divided into two or more election districts, the officers or board creating, dividing or altering such election districts, shall forthwith make a map or description of such division,

defining it by known boundaries, and cause such map or description to be kept open for public inspection in the office of the city clerk, and cause copies thereof to be posted not less than ten days prior to the first day of registration in each year, in at least ten of the most public places in each election district so created, divided or altered, and shall, prior to every election, furnish copies of such map or description to the inspectors of election in each election district of such ward or assembly district. The officers creating, dividing or altering an election district in a town shall forthwith make a certificate or map thereof, exhibiting the districts so created, divided or altered, and their numbers respectively, and file the same in the county clerk's office, and a copy thereof in the town clerk's office, and cause copies of the same to be posted in at least five of the most public places in each election district of such town, and the county clerk shall, prior to every general election, furnish copies of such maps or certificates to the inspectors of election in each election district of such town, provided such election district is not coterminous with the town lines.

§ 10. Designation of places for registry and voting, publication of same; and provisions of furniture therefor.— On the first Tuesday of September in each year, the town board of each town, and the common council of each city, except New York and Brooklyn, the board of police commissioners of the city of New York and the board of elections of the city of Brooklyn, shall designate the place in each election district in the city or town at which the meeting for the registration of electors and the election shall be held during the year. Each room so designated shall be of a reasonable size, sufficient to admit and comfortably accommodate at least ten electors at a time outside of the guard rails. No building, or part of a building, shall be so designated in any city if within thirty days before such designation, intoxicating liquors, ale or beer, shall have been sold in any part thereof. No room shall be so designated elsewhere than in a city, if within thirty days before such designation intoxicating liquors, ale or beer, shall have been sold in such room, or in a room adjoining thereto, with a door or passageway between the two rooms. No intoxicating liquors, ale or beer shall be sold in such building in a city or such room or adjoining room elsewhere after such designation and before the general election next thereafter, or be allowed in any room in which an election is held during the day of the election or the canvass of the votes. Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor. If any place so

designated shall thereafter and before the close of the election be destroyed, or for any reason become unfit for use, or cannot for any reason be used for such purpose, the officers charged with the designation of a place for such election shall forthwith designate some other suitable place for holding such election. Not more than one polling place shall be in the same room, and not more than two polling places shall be in the same building. The officers authorized to designate such places in any town or city, shall provide for each polling place at such election, the necessary ballot and other boxes, guard rails, voting booths and supplies therein, and the other furniture of such polling place, necessary for the lawful conduct of each election thereat, shall preserve the same when not in use, and shall deliver all such ballot and other boxes for each polling place, with the keys thereof, to the inspectors of election of each election district at least one-half hour before the opening of the polls at each election. The officers authorized to designate the registration and polling places in any city shall cause to be published in two newspapers within such city a list of such places so designated, and the boundaries of each election district in which such registration and polling place is located except that in the city of Brooklyn such publication shall be made in the newspapers designated as corporation newspapers for said city. Such publication shall be made in the newspapers so selected upon each day of registration and the day of election, and on the day prior to each such days. One of such newspapers so selected shall be one which advocates the principles of the political party polling the highest number of votes in the state at the last preceding election for governor, and the other newspaper so designated shall be one which advocates the principles of the political party polling the next highest number of votes for governor at said election.

§ 11. **Election officers; designation, number and qualifications.** — There shall be in every election district of this state the following election officers, namely, four inspectors, two poll clerks and two ballot clerks, whose term of office shall be for one year from the date of their appointment or election, and who shall serve at every general or special election held within their districts during such term. No person shall be appointed or elected an inspector of election, poll clerk or ballot clerk who is not a qualified elector of the city, or of the election district of the town in which he is to serve, of good character, able to read and speak the English language understandingly, and to write it legibly, or who is a candidate for any office to be voted

for by the electors of the district in which he is to serve; or, who has been convicted of a felony, or who holds any public office or place of public trust, except notary public or commissioner of deeds, whether elected or appointed, or who is employed in any public office or by any public officer whose services are paid for out of the public moneys, or any person who is appointed or elected to, or accepts public office, or such employment therein or by any public officer. Each class of such officers shall be equally divided between the two political parties, which, at the last preceding election for governor, polled the highest and next highest number of votes for such office in the state.

§ 12. Appointment and qualifications of election officers in cities. — Subdivision 1. On or before the first day of October in each year, the board of police commissioners of the city of New York, the board of elections of the city of Brooklyn, and the mayor of each other city, shall select and appoint the election officers for each election district in their respective cities; and shall severally have the power to fill all vacancies which may arise before the opening of the polls on election day. To insure the bipartisan character of such board or body of election officers required by the election law, each political party entitled to representation in such board or body shall have the right, not later than the first day of August in each year, to prepare and file with the board or officer empowered to make the appointment, as herein provided, a list of persons, members of such party, duly qualified to serve as election officers. In the cities of New York and Brooklyn such list shall be authenticated and filed by the chairman of the executive committee of the general city or county committee of the party; in other cities, by the chairman and secretary of the general, city or county committee of such party, if there be such a committee, or, if not, then by the corresponding officers (by whatever name known) of any committee performing the usual functions of a city or county committee; provided, however, that if in any city more than one such list be submitted in the name or on behalf of the same political party, only that list shall be accepted which is authenticated by the proper officer or officers of the faction or section of such party, which was recognized as regular by the last preceding state convention of such party; or, where no such convention has been held within the year, by the proper officer of the faction or section of said party which, at the time of the filing of said list, is recognized as regular by the state committee of such party, which was organized by or pursuant to the direction of the last preceding state convention of such party. All

persons so proposed for appointment may be examined as to their qualifications by or under the direction of the board or officer charged with the duty of making the appointment; and if found duly qualified they shall be appointed to the respective positions for which they were recommended. If any of them are found disqualified, notice in writing of that fact shall be promptly given to the person or person by whom the list embracing their names was authenticated, and he or they shall have the right within ten days after the personal delivery or mailing to him or them of such notice, to file a supplemental list proposing the name of suitable members of his or their party for appointment in lieu of those thus rejected; provided, however, that the substitutes thus proposed shall also be subject to examination and rejection if found disqualified. If either party entitled to propose election officers, as herein provided, shall fail to authenticate and file such a list on or before the first day of August, or if any of the persons named therein shall be found disqualified, or if no supplemental list be filed, as herein provided, or if one or more persons named in such supplemental list be found disqualified, then such board or officer shall proceed to select in such manner as may seem to them or him feasible from the members of the party or parties in default, or whose nominees have been found disqualified, and shall appoint suitable persons to act as election officers. In the cities of New York and Brooklyn, the two members of the respective boards charged with the duty of appointing election officers, who represent the same political party, shall have the exclusive right and be charged with the exclusive duty of selecting from the list submitted, or in lieu of persons named on such list who shall have been found disqualified, the members of such party who are to be appointed as election officers. Every person appointed as an election officer shall, within five days after notice of his appointment, take and subscribe the constitutional and statutory oaths of office, which shall be administered, if in the city of New York by the chief of the bureau of elections, or the chief clerk of said bureau; if in the city of Brooklyn, by any member of the board of elections of said city, or any clerk or clerks designated by said board for that purpose; and if in any other city, by the mayor thereof, or by any person or persons designated by him for that purpose; and all of said officers, and every clerk or person so designated by them or him for that purpose, shall be and is hereby authorized and empowered to administer such oaths. Every person so sworn as an election officer shall receive a certificate of appoint-

ment and qualification, signed by the person who administered the oath, in such form as may be approved by the board or officer by which or whom he was appointed, and specifying the capacity and the election district in which he is to serve, and the date of the expiration of his term of office. Any election officer so appointed may be removed for cause, in which case such removal, unless made while such officer is actually on duty on the day of registration, revision of registration or election, and for improper conduct as an election officer, shall only be made after notice in writing to the officer to be removed, which notice shall set forth clearly and distinctly the reason for his removal. Any election officer who shall at any time be appointed to fill a vacancy, which fact shall be stated in the certificate of appointment, shall hold office only during the unexpired term of his predecessor, and provided that no election officer shall be transferred from one election district to another after he has entered upon the performance of his duties. The chairman of each board of inspectors of each election district shall, within twenty-four hours after any election, furnish to the mayor or board appointing such officers, if required so to do by such mayor or board, under his hand, a certificate stating the number of days of actual service of each member of such board, the names of the persons who served as poll clerks and ballot clerks on election day, and the number of days during which the store or building hired for registration and voting purposes was actually used for such purposes. Any person acting as such chairman, who shall willfully make a false certificate, shall be deemed guilty of a misdemeanor. Every person appointed as an election officer, failing to take and subscribe the oath of office as hereinbefore provided, or who shall willfully neglect or refuse to discharge the duties to which he was appointed, shall, in addition to the other penalties prescribed by law, be liable to a fine of one hundred dollars, to be sued for and recovered by the mayor or board making the appointment in a court of record, for the use and benefit of the treasury of such city. Any election officer who, being removed for cause, shall fail upon demand to deliver over to his successor the register of electors, or any tally sheets, book, paper, memorandum or document relating to the election in his possession, so far as he has made it, shall be liable to a like penalty to be recovered in a like manner for the benefit of such city. All persons appointed and serving as election officers in cities of the first class shall be exempt from jury duty for one year from the date of the general election at which they serve.

§ 13. **Election officers in towns.**— Inspectors of election in towns shall be elected and appointed as provided in section nineteen of the town law. At the first meeting of the inspectors of election in every district in which the law provides for the election of inspectors, the inspectors elected shall appoint one of the poll clerks and one of the ballot clerks, and the inspectors appointed shall appoint the other poll clerk and ballot clerk. Such appointments shall be in writing, signed by the inspectors making the appointments respectively, and shall be filed by them with the town clerk of the town in which such election district is situated. The poll clerks and ballot clerks so appointed shall hold their office during the term of office of the inspectors appointing them, except as hereafter provided. The persons so appointed as poll clerks and ballot clerks shall be voters in the district in which they are appointed to serve, and shall possess the qualifications required of such officers by section eleven of this act. If at any time of any election at which poll clerks and ballot clerks are required to be present at the polling place in any election district, the office of a poll clerk or of a ballot clerk of such district shall be vacant, or a poll clerk or ballot clerk shall be absent, the inspectors of election in such district shall forthwith appoint a person to fill such vacancy. Such person so appointed shall, before he acts as such poll clerk or ballot clerk, take the constitutional and statutory oaths of office.

§ 14. **Organization of boards of inspectors; supplying vacancies and absences.**— Before otherwise entering upon their duties, the inspectors of each district shall meet and appoint one of their number chairman; or, if a majority shall not agree upon such appointment, they shall draw lots for that position. If at the time of any meeting of the inspectors there shall be a vacancy in the office of any inspector, or if any inspectors shall be absent from any such meeting, the inspector or inspectors present shall appoint a qualified elector of the district, who shall be a member of the same political party as the absent inspector, to act until such absent inspector, or his successor duly appointed under the provsions of section twelve, shall appear, and such person, if so serving temporarily, shall serve without pay. If, at any such time, the offices of all inspectors are vacant, or no inspector shall appear within one hour after the time fixed by law for the opening of such meeting, the qualified voters of the district present, not less than ten, may designate four qualified electors of the district belonging to the political parties as specified in section eleven, to fill such vacancies, or to act in

the place of such inspectors respectively, until the absent inspectors respectively appear. If at any time there shall be a vacancy in the office of any poll clerk or ballot clerk, or if any poll clerk or ballot clerk shall be absent from such meeting, the inspector or inspectors present shall appoint a qualified elector of the district, who shall be a member of the same political party as the absent poll clerk or ballot clerk to fill such vacancy. Every person so appointed or designated to act as an inspector, poll clerk or ballot clerk shall take the constitutional and statutory oaths as prescribed by the election law.

§ 15. **Preservation of order by inspectors.**—All meetings of the board of inspectors shall be public. Such board and each individual member thereof shall have full authority to preserve peace and good order at such meetings, and around the polls of elections, and to keep the access thereto unobstructed, and to enforce obedience to their lawful commands. The said board may appoint one or more electors to communicate their orders and directions, and to assist in the performance of their duties in this section enjoined. If any person shall refuse to obey the lawful commands of the inspectors, or by disorderly conduct in their presence or hearing shall interrupt or disturb their proceedings, they shall make an order directing the sheriff or any constable of the county, or any peace or police officer to take the person so offending into custody, and retain him until the registration of electors, or the canvass of the votes shall be completed, but such order shall not prohibit the person taken into custody from voting. Such order shall be executed by any sheriff, constable, peace or police officer, to whom the same shall be delivered. But if none shall be present, then by any other person deputed by such board in writing. The said board or any member thereof, may order the arrest of any person other than an election officer violating or attempting to violate, any of the provisions of this election law.

§ 16. **Ballot boxes.**— There shall be but one ballot box at each polling place for receiving all ballots cast for candidates for office, which box shall be conspicuously marked "Box for general ballots." There shall also be a ballot box for the reception of ballots found to be defective in printing, or mutilated before delivery to electors, and for ballots spoiled and returned by electors, which box shall be conspicuously marked "Box for spoiled and mutilated ballots." There shall also be a box for detached ballot stubs, which box shall be conspicuously marked, "Box for detached ballot stubs." If proposed constitutional amendments, or other propositions or questions

may lawfully be voted upon thereat, there shall be a separate ballot box at each polling place for the reception of ballots upon such amendments or propositions, or questions, which box shall be marked conspicuously, "Box for questions submitted." Each box used for the reception of voted ballots shall be provided with a sufficient lock and key, and with an opening in the top thereof large enough, and not larger than may be necessary to allow a single folded ballot to be easily passed through such opening into the box. Each box shall be large enough to properly receive and hold all ballots which may lawfully be deposited therein at any election.

§ 17. **Voting booths and guard rails.**—There shall be in each polling place during each election a sufficient number of voting booths, not less than one for every seventy-five registered electors in the district. Each such booth shall be at least three feet square, shall have four sides enclosed, each at least six feet high, and the one in front shall open and shut as a door swinging outward, and shall extend within two feet of the floor. Each such booth shall contain a shelf which shall be at least one foot wide, extending across one side of the booth at a convenient height for writing, and shall be furnished with such supplies and conveniences including pencils having black lead only, as will enable the electors to conveniently prepare their ballots for voting. Each booth shall be kept clearly lighted while the polls are open by artificial lights if necessary. A guard rail shall be placed at each polling place at least six feet from the ballot boxes and the booths, and no ballot box or booth shall be placed within six feet of such rail. Each guard rail shall be provided with a place for entrance and exit. The arrangement of the polling place shall be such that the booths can only be reached by passing within the guard rail, and that the booths, ballot boxes, election officers and every part of the polling place except the inside of the booths, shall be in plain view of the election officers and the persons just outside the guard rail. Such booths shall be so arranged that there shall be no access to intending voters or to the booths through any door, window, or opening, except by the door in front of said booth.

§ 18. **Payment of election expenses.**—The expense of providing polling places, voting booths, supplies therefor, guard rails and other furniture of the polling place, and distance markers, and the compensation of the election officers in each election district, shall be a charge upon the town or city in which such election district is situated, except that such expenses incurred for the purpose of conducting a village election, not held

at the same time as a general election, shall be a charge upon the village. The expense of printing and delivering the official ballots, sample ballots and cards of instruction, poll books, tally sheets, return sheets for inspectors and ballot clerks, and distance markers to be used at a town meeting, city or village elections not held at the same time as a general election, and of printing the lists of nominations therefor, shall be a charge upon the town, city or village in which the election is held. The expense of printing and delivering the official ballots, sample ballots and cards of instructions, poll books, tally sheets, return sheets for inspectors and ballot clerks, and distance markers, to be used in any county at any other election, if no town meeting, city or village election be held at the same time therewith, and of printing the lists of nominations therefor, shall be a charge upon such county. The expense of printing and delivering the official ballots, sample ballots and cards of instruction, poll-books, tally sheets, return sheets for inspectors and ballot clerks, and distance markers, to be used in any county at any such other election, and of printing the lists of nominations therefor, if the town meeting, city or village election be held in such county at the same time therewith, shall be apportioned by the county clerk between such town, city or village and such county, in the proportion of the number of candidates for town, city or village officers on such ballots, respectively, to the whole number of candidates thereon, and the amount of such expense so apportioned to each such municipality shall be a charge thereon. All expenses lawfully incurred by the board of police commissioners of the city of New York, and by the board of elections of the city of Brooklyn, shall be a charge on such respective cities, and after being audited by the proper officer, shall be paid by the comptroller of said respective cities upon the certificate of such boards, respectively. The county clerk of each county, not salaried, shall be paid by such county a reasonable compensation for his services in carrying out the provisions of this chapter, to be fixed by the board of supervisors of the county, or the board acting as such board of supervisors. The town clerk of each town shall be paid by such town a reasonable compensation for his services in carrying out the provisions of this chapter, to be fixed by the other members of the town board of the town. Ballot clerks, and persons acting as such, shall receive the same compensation for their attendance at an election, as inspectors of election for the election, and be paid in like manner. An inspector of election lawfully required to file

papers in the county clerk's office, shall, unless he resides in the city or town in which such office is situated, be entitled to receive as compensation therefor five dollars, and also four cents a mile for every mile actually and necessarily traveled between his residence and such county clerk's office in going to and returning from such office. In cities of the first class, the persons appointed and serving as inspectors of election shall receive five dollars for the hours fixed by law for each day of registration, and of revision of registration for a special election, and five dollars for the hours fixed by law for the election, and five dollars for the canvass and return of the votes. The poll clerks in such cities shall each receive the same compensation as inspectors for the election and for the canvass of the votes, and the ballot clerks shall receive five dollars each. Such officers shall be paid by the comptroller of their respective cities upon the certificate of the board appointing them.

§ 19. **Delivery of election laws to clerks, boards and election officers.** — The secretary of state shall cause to be prepared a compilation of all the laws relating to elections in cities, towns, and villages in force on the fifteenth day of May, in the year eighteen hundred and ninety-six, together with subsequent amendments thereto, with annotations and explanatory notes and blank forms, properly indexed, and shall procure the same to be printed wherever he deems it desirable for the best interests of the state, and shall, at least sixty days before each general election held after this chapter takes effect, transmit to the county clerk of each county, except New York and Kings, and to the board of police commissioners of the city of New York, and the board of elections of the city of Brooklyn, a sufficient number of copies thereof, to furnish one such copy to the county clerk and members of such boards, and one to each town, village and city clerk, and to each election officer in such county and said cities. The county clerk of each county, except New York and Kings, and the board of police commissioners of the city of New York and the board of elections of the city of Brooklyn, shall forthwith transmit one of each such copies to each such officer in such county or city. Each copy so received by each such officer shall belong to the office of the person receiving it. Every incumbent of the office shall preserve such copy during his term of office, and upon the expiration of his term, deliver it to his successor.

ARTICLE II.

Registration of Electors.

Section 30. Meetings for registration.
31. Adding and erasing names on register.
32. Forms for registration.
33. Method of registration.
34. General provisions.
35. Certification and custody of register.
36. Delivery of blank books for registration, certificates and instructions.

Section 30. **Meetings for registration.**— Before every general election, the board of inspectors for each election district in every city, and in villages having five thousand inhabitants or more, shall hold four meetings for the registration of the electors thereof, at the place designated therefor, on the fourth Friday, fourth Saturday and the third Friday and third Saturday before such election, to be known respectively as the first, second, third and fourth meetings for registration. Each meeting, if in cities of the first class, shall begin at seven o'clock, if elsewhere, at eight o'clock in the forenoon, and continue, if in cities of the first class, until ten o'clock, if elsewhere, until nine o'clock in the evening. In all election districts other than in cities or villages having five thousand inhabitants or more, the board of inspectors of election for each such election district shall hold two meetings for the registration of electors thereof, at the places designated therefor, before each general election, viz., on the fourth and third Saturday before the election, to be known respectively as the first and second meetings for registration, which meetings shall begin at nine o'clock in the forenoon and continue until nine o'clock in the evening. The board of inspectors of election shall also, if ordered so to do by the supreme court, or a justice thereof, or a county judge, as provided in section thirty-one of the election law, meet on the second Saturday before each general election for the purpose of correcting the registers by adding to or striking off the name of any person as directed by such order. It shall be the duty of each inspector of election to make a note on the registers opposite the name of each person so enrolled, or so stricken off, of the date of such order, and the court, justice or judge issuing the same. If any special election shall be ordered in any city or village, the inspectors of election of the various election districts in which such special election is to be held, shall meet in their respective

districts at the place designated therefor, on the second Saturday preceding such special election, from eight o'clock in the forenoon to ten o'clock in the evening for the purpose of revising and correcting the register of electors as hereinafter provided. No inspector shall on any day for registration be absent during the hours fixed for enrolling the names of electors.

§ 31. **Adding and erasing names on register.**—If the board of inspectors at any meeting for the registration of electors shall have neglected or refused to place upon the register of electors the name of any person who is entitled to have his name placed thereon, application may be made to the supreme court, or any justice thereof in the judicial district in which such election district is located, or of a county adjoining such judicial district, or to a county judge of the county in which such election district is located, on a day at least two days prior to the second Saturday before any election, for an order to place such name upon the register of electors; and such court, justice or judge may, upon sufficient evidence, and upon such notice of not less than twenty-four hours to the board of inspectors, and such other persons interested of such application as the court, justice or judge may require, order such inspectors to convene as a board of registration on the second Saturday before such election, and to add the name of such person to such register of electors, and such register shall be corrected accordingly; but no court, justice or judge shall order the name of any person to be added to the register of electors unless it shall have been omitted therefrom through the fault, error or negligence of the election officers. In case the name of any person who will not be qualified to vote in such election district, at the election for which such registration is made, shall appear upon such register, application may be made in like manner by any elector of the town or city in which such election district is located to any court, justice or judge hereinbefore designated, for an order striking such name from the register, and such court, justice or judge may, upon sufficient evidence, and upon such notice of not less than twenty-four hours to the person interested of such application as the court, justice or judge may require, served either personally or by depositing the same in the post-office addressed to said person by his name, and at the address which appears in the register certified by the inspectors of election, proceed to convene the board of inspectors as provided herein for adding a name, and may order such board to strike such name from such register of electors, and such register shall be corrected accordingly.

§ 32. **Forms for registration.**—Subdivision 1. The board of inspectors of each election district in the state shall, at their

meetings for registration for the general election in each year, make a quadruplicate register — one copy by each inspector — of the names and residences of those persons, and none other, who are or will be qualified to vote in such district at such election, which register, when finally completed, shall be the register of electors of the district for such election. Such register shall also be used at all other elections held in such district during the year succeeding the election for which it is made, except for town meetings and village elections for which no registration is required. In cities of the first class, the register shall be arranged in fifteen columns. In the first column of such register there shall be entered at the time of the completion of the registration on the last day for registration, a number opposite the name of each person so enrolled, beginning with "1" and continuing in numerical order. On each day of registration there shall be entered in the second column thereof the surnames of such persons in the alphabetical order of the first letter thereof, and in the third column the Christian names of such persons respectively. In the fourth column shall be entered the residence number or other designation, and in the fifth column the name of the street or avenue of such residence or a brief description of the locality thereof. In the sixth column shall be entered the number of the floor or room occupied by the elector at the residence given by him, in the seventh column shall be entered his age, in the eighth, ninth and tenth columns his length of residence in the state, county and election district, respectively; in the eleventh column shall be entered the fact, if he be a native citizen. In the twelfth column the fact, if he be a naturalized citizen; in the thirteenth column shall be entered the date of the registration of the elector. The fourteenth column shall be reserved for entering the consecutive number on the stub of the official ballot voted by the elector on election day. In the fifteenth column shall be entered, opposite the name of each elector, under the heading "remarks," the facts regarding challenges, oaths and other facts affecting such elector required to be recorded.

Subdivision 2. In all election districts other than in cities of the first class, the register shall be arranged in eight columns. In the first column of such register there shall be entered at the time of the completion of the registration on the last day thereof, a number opposite the name of each person so enrolled, commencing with "1" and continuing in numerical order. On each day of registration there shall be entered in the second column thereof the surnames of such persons in the alphabetical order of the first letter thereof, and in the third column the Christian

names of such persons respectively. In the fourth column shall be entered the residence number or other designation, and in the fifth column the name of the street or avenue of such residence, and a brief description of the locality thereof. In the sixth column shall be entered the date on which the elector was registered. The seventh column shall be reserved for entering the consecutive number on the stub of the official ballot voted by the elector on election day. In the eighth column shall be entered opposite the name of each elector, under the heading "remarks," the facts regarding challenges, oaths and other facts affecting such elector required to be recorded.

Subdivision 3. In cities of the first class, the board of inspectors of each election district shall, immediately after the close of each day of registration, make and complete one list of all persons enrolled in their respective districts, in the numerical order of the street numbers thereof which list shall be signed and certified by the board of inspectors. Such list shall be delivered by the chairman of the board of inspectors to the police captain of the precinct in which the election district is located, or an officer thereof, who shall forthwith deliver the same, if in the city of New York, to the supervisor of the City Record, if in the city of Brooklyn, to the board of elections, and if in the city of Buffalo, to the city clerk. In the city of New York such list, compiled by assembly districts, shall be published in the City Record within three calendar days after the last day of registration and before the election. In the city of Brooklyn the board of elections, and in the city of Buffalo the city clerk shall, as soon as possible after the delivery of such list, and before the day of election, print and distribute, in pamphlet form, for each ward, not less than fifty times as many copies of said list as there are election districts in such ward, so that each ward pamphlet shall contain the lists of the several election districts in such ward. Such lists shall be made in the following form, to wit:

GRAND STREET.

Residence number, or other designation.	Name of voter.
14.	Smith, John M.
15.	Jones, Charles M.

§ 33. **Method of registration.**— Subdivision 1. In cities and in villages having five thousand inhabitants or more, the names of such persons only as personally appear before the inspectors, and who are or who will be at the election for which the registration is made, qualified electors, shall be enrolled upon the

register at a meeting for registration for a general election, except that whenever any election district in a village having five thousand inhabitants or more shall embrace within its boundaries, territory without the limits of such village, the inspectors shall, at their first meeting for registration for a general election, place upon such register the names of all persons appearing on the register of the last preceding general election, who resided without the limits of such village, but within the election district, who voted at such last preceding general election, except the names of such electors who are proven to the satisfaction of such inspectors to have ceased to be electors since such general election, or have moved within the limits of such village. They shall also place upon such register, at their first and subsequent meetings, the names of all other persons known or proven to their satisfaction, who are or will be entitled to vote at the election, who reside within such election district, but without the limits of such city or village.

Subdivision 2. In cities of the first class the board of inspectors shall issue to every person enrolled upon the register, a certificate in which shall be written the name and address given by such person, and the date of such entry upon the register. Such certificate shall be retained by the person to whom it is issued as evidence of the fact that such name and address were entered upon the register.

Subdivision 3. At the first meeting for registration in all election districts where only two meetings for the enrollment of electors are held for any general election, as provided in section thirty of the election law, the inspectors shall at such first meeting, place upon the register the names of all persons who voted at the last preceding general election, as shown by the register or poll book of such election, except the names of such electors as are proven to the satisfaction of such inspectors to have ceased to be electors in such district since such general election, and also at said first meeting and at the second meeting, they shall place on the register the names of all persons known or proven to the satisfaction of the inspectors who are, or will be, entitled to vote at the election for which such registration is made.

Subdivision 4. At the meeting of the board of inspectors in a city or village having five thousand inhabitants or more, for revising and correcting the register for any election other than a general election, the inspectors shall retain upon the register of their respective districts, the names of all persons qualified to vote at such election in such district, which appear upon the

register of electors for the last preceding general election in such election district, except the names of such electors as are proven to the satisfaction of the inspectors to have ceased to be electors of such district since their names were placed upon such register, and shall, at such meeting, add only to such register the names of the persons qualified as electors, who shall personally appear before the board. If, however, such elector resides within such election district, but without the limits of such village, his name shall be placed upon such register, if it is shown to the satisfaction of such board that he is entitled to vote therein. In cities of the first class any elector who was enrolled upon the register in an election district of such city at the last preceding general election, and who since that time shall have removed into another election district in the same city, and who is otherwise qualified to vote at such special election, shall, upon demand, receive from the board of inspectors of the district in which his name was enrolled for such last preceding general election, a certificate duly signed by the said board of the fact that his name was upon such register, and has been erased therefrom because of such removal, and his name shall thereupon be erased from such register. Upon presentation of such certificate by the elector to the board of inspectors of the election district in which he resides, his name shall be placed upon the register for such district. The inspectors must note upon the register opposite the name of such elector, the fact of such certificate of removal, specifying the election district from which he has removed. They shall carefully attach such certificate to the register. No elector shall cause his name to be placed upon the register of an election district for any election other than a general election, while his name shall appear upon the register of another district to be used at such election. Any person who shall violate this provision is guilty of a felony; and upon conviction shall be punished by imprisonment in a state prison for not less than two or more than five years. In all election districts other than in cities or in villages of five thousand inhabitants or more, the board of inspectors in preparing for an election other than a general election shall add to the register for the last preceding general election, the names of such electors as they know are or are satisfied by proof will be, on the day of such election, entitled to vote thereat, and shall strike therefrom the names of all persons whom they know or are satisfied by proof have ceased to be qualified electors of such election district. No registration of electors shall be required for town or village elections.

§ 34. **General provisions.**— Subdivision 1.— **Qualification of elector.** — A person is a qualified elector in any election district for the purpose of having his name placed on the register if he is or will be, on the day of the election, qualified to vote at the election for which such registration is made. A qualified elector is a male citizen who is or will be on the day of election twenty-one years of age, who has been an inhabitant of the state for one year next preceding the election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote. If a naturalized citizen, he must, in addition to the foregoing provisions, have been naturalized at least ninety days prior to the day of election.

Subdivision 2. For the purpose of registering and voting no person shall be deemed to have gained or lost a residence, by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, or institution wholly or partly supported at public expense, or by charity; nor while confined in any public prison. Any person claiming to belong to any class of persons mentioned and referred to in this subdivision shall file with the board of inspectors at the time of registration a written statement showing where he is actually domiciled, his business or occupation, his business address, and to which class he claims to belong. Such statement shall be attached to the register, and be open for public inspection, and the fact thereof shall be noted in the register opposite the name of the person so enrolled.

Subdivision 3. **Illiterate and disabled electors.**— If, at any meeting for the registration of electors, any person entitled to be registered and of whom personal registration is required, shall declare to the board of inspectors at the time he applies for registration, that he is unable to write by reason of illiteracy, or that he will be unable to prepare his ballot without assistance by reason of blindness, or of such degree of blindness as will prevent him, with the aid of glasses, from seeing the names printed upon the official ballot, loss of both hands, or such total inability of both hands that he cannot use either hand for ordinary purposes, or that he will be unable to enter the voting booth without assistance by reason of disease or crippled condition, the nature of which he must specify, it shall be the duty of the said board of inspectors to administer an oath to such person

in the following language, namely: "You do solemnly swear (or affirm) that you will be unable to prepare your ballot without assistance, because," and after the word "because," continuing with a statement of the specific disease or crippled condition assigned by the person as the cause of his alleged disability, and the said inspectors and each of them shall make a note upon the register of each instance in which such oath is administered, and of the cause or reason so assigned.

Subdivision 4. If any elector after being enrolled, shall change his place of residence within the same election district, he may appear before the board of inspectors of such district on any day of registration, or on the day of election, and state under oath that he has so changed his residence, and the board of inspectors shall thereupon make the proper correction upon the register of such district.

Subdivision 5. No part of a day fixed for the registration of electors shall be deemed a holiday so as to effect any meeting or proceeding of the board of inspectors for registration.

Subdivision 6. **Challenges to applicants for registration.**— Any person who applies personally to any board of inspectors for registration for any election may be challenged by any qualified elector present. If such applicant be so challenged, or if any member of the board of inspectors shall have reason to suspect that such applicant is not entitled to have his name enrolled on such register, the chairman of the board shall administer to such applicant the preliminary oath which is required by law to be administered to a challenged person offering to vote at a general election, and may thereupon examine him as to his qualifications as an elector, and may require him to state under oath his age, residence by street and number, if it have a street number, and, otherwise, to describe the locality thereof, and if he is not a householder, to state the name of the householder with whom he resides, and in like manner to describe the residence of such householder. If the applicant shall by his answers satisfy the inspectors of his right to be registered, they shall enroll his name; if not, they shall tender to him the general oath prescribed by law in the case of an elector attempting to vote under challenge. If such applicant shall make such oath, his name shall be placed upon the register. If he shall refuse to make such oath, his name shall not be placed upon the register.

Subdivision 7. **Record of challenges.**— If, at a meeting of the board of inspectors for registration, any elector shall, upon oath, declare that he has reason to believe that any person on the register of electors will not be qualified to vote at the election

for which the registration is made, the board of inspectors shall place the words "to be challenged" opposite the name of such person, and when such person shall offer his vote at such election, the general oath as to qualification shall be administered to him, and if he shall refuse to take such oath he shall not be permitted to vote.

Subdivision 8. **Production of naturalization papers.**—It shall be the duty of every naturalized citizen before being registered to produce to the inspectors, if any inspector shall require, his naturalization papers or a certified copy thereof for their inspection, and to make oath before them that he is the person purporting to have been naturalized by the papers so produced, unless such citizen was naturalized previous to the year eighteen hundred and sixty-seven. If however such naturalized citizen can not for any reason produce his naturalization papers, or a certified copy thereof, the board of inspectors, or a majority of such board may place the name of such naturalized citizen upon the register of electors upon his furnishing to such board evidence which shall satisfy such board of his right to be registered.

Subdivision 9. Any person knowingly taking a false oath before the board of inspectors, shall upon conviction thereof be punished as for willful and corrupt perjury.

§ 35. Subdivision 1. **Certification and custody of register.**—At the close of each meeting for the registration of electors, for a general or other election in a city, or in an election district wholly within a village having five thousand inhabitants or more, the inspectors shall append to each book of registration their certificate, to the effect that such register as it now is comprising (here insert the number) names, is a true and correct register of the names and residences of all the electors qualified to vote at such election in such district, who have personally appeared before the board of registration, and such registers so certified shall be presumptive evidence that the names and places of residence contained therein are the names and places of residence given by the persons registered respectively. At the close of each meeting for the registration of electors for a general or other election elsewhere than in a city, or in a district wholly within a village having five thousand inhabitants or more, the inspectors shall append to each book of registration a certificate to the effect that such register as it now is, comprising (here insert the number) names, is a true and correct register of all electors qualified to vote at such election in such district, who have personally applied for registration, or whose names the board was required by law to place thereon. Each such

certification shall be signed by all the inspectors, but in case one inspector required to sign such certificate shall fail for any reason so to do, he may be required by the officer with whom such register is filed to sign such register at a subsequent date. In all cases a majority of the inspectors must sign such certificate at the close of each day of registration.

Subdivision 2. The register of electors made by the chairman of the board of inspectors shall be, and shall be known, as the public copy of registration. Such public copy shall be left in a prominent position in the place of registration from the first day of registration until election day, and shall at all reasonable times be open to public inspection and for making copies thereof. Each other inspector shall carefully preserve his register of electors and shall be responsible therefor, until the close of the canvass of the votes on election day, except as hereinafter provided for in cities of the first class. At the close of each day of registration, the inspectors shall draw a line in ink immediately below the name of the elector last entered upon each page of each such register. Upon the succeeding day of registration, they shall enter the names of electors in the alphabetical order of the first letter of the surname below the line so drawn upon the proper page after the close of the previous day of registration. Upon the close of the last day of registration, the inspectors shall again carefully compare all the books of registration, to see that they are identical as to their contents, and (after making and completing the separate list of the electors in cities of the first class, as provided in subdivision three of section thirty-two of the election law), shall certify as a board in the proper place provided therefor upon each such register that such register is a true and correct register of the persons enrolled by them in such district for the next ensuing election, and shall state the whole number of such persons so enrolled. In cities of the first class, at the close of the last day of registration, the chairman of the board of inspectors shall take from an inspector of opposite political faith from himself, the register of electors made by such inspector and shall file the same on the Monday after the last day of registration, if in the city of New York with the chief of the bureau of elections, if in the city of Brooklyn with the board of elections, and if in the city of Buffalo with the city clerk. Such register so filed, shall be a part of the record of the offices in which it is filed. The two other inspectors of opposite political faith from each other shall each retain their respective registers of electors for use on election day. All registers of electors shall at all reasonable hours be accessible for public examination and making copies thereof,

and no charge of any kind shall be made for such examination or for any elector making a copy thereof. In cities of the first class the public copy of registration shall be used, if necessary, on election day by the inspector whose register was filed as herein provided by said chairman. Any person who shall alter, mutilate, destroy or remove from the place of registration the public copy of such registration, shall be guilty of a felony, and shall be punished upon conviction thereof by imprisonment in a state prison for not less than two nor more than five years, unless otherwise provided by law. If, in cities of the first class, the board of inspectors shall meet on the second Saturday before the election for the purpose of revising and correcting the register of electors in pursuance of an order of the supreme court, a justice thereof or a county judge, as provided in section thirty-one of the election law, the inspectors shall certify forthwith to the officer or board with whom the copy of the register is filed, the change or changes made upon such register in pursuance of such order. At any revision of registration for an election other than a general election, the quadruplicate register of electors for the last preceding general election shall be furnished to the inspectors of election by the officer or board having the custody thereof, and the inspectors shall certify to the officer or board in cities of the first class with whom the registers are filed, the changes, additions or alterations made in such registers for such election. In the cities of the first class at the close of the canvass of the votes of any election, or within twenty-four hours thereafter the two copies of the register of electors used by the inspectors and the public copy thereof shall be filed respectively with the chief of the bureau of elections in the city of New York, and with the board of elections in the city of Brooklyn, and with the city clerk of Buffalo. In all election districts other than in cities of the first class, one copy of the register used on election day by the inspectors shall within twenty-four hours after the close of the election be filed in the office of the town or city clerk of the town or city in which such election district is, and the other copies with the county clerk. Such register of electors shall be carefully preserved for use at any election which may be ordered or held in either of such counties or cities, respectively, prior to the next ensuing general election, at which they may be required.

Subdivision 3. At the close of registration on the fourth day in the election districts in cities and villages of five thousand inhabitants or more, and at the close of registration on the second day in other districts, the board of inspectors shall forthwith certify to the officer or board charged with the duty of

furnishing ballots to such district, the total number of electors enrolled in such district. In cities of the first class the inspectors of each district shall also furnish to the police at the close of each day of registration, the total number of electors enrolled on such day, in their respective districts.

§ 36. Subdivision 1. **Delivery of blank books for registration, certificates and instructions.**— The secretary of state shall purchase wherever he deems it desirable for the best interests of the state a suitable number of blank books for register of electors, with blank certificates and brief instructions for registering the names of electors therein, in the forms respectively provided in subdivisions one and two of section thirty-two of the election law, at least four of such books for each board of inspectors in the state, and such number of extra copies thereof as in his judgment may be necessary for each county or city to replace lost or damaged registers before delivery to the inspectors. Such register of electors shall have the leaves thereof indexed with the letters of the alphabet, beginning with the letter "A" for the first leaf, and so on. He shall transmit such registers, certificates and instructions to the county clerk of each county, except New York and Kings, and to the board of police commissioners of the city of New York, and to the board of elections of the city of Brooklyn, at least twenty days prior to the first day of registration for a general election in each year. The county clerk shall deliver such books to the town clerks of each town, and to the city clerk of each city in such county, by mail or otherwise, at least five days prior to the first day of registration, and such town clerks and city clerks, and the said boards in New York and Brooklyn, shall deliver such books to the inspectors before the hour set for registering the names of electors on the first day for registration. On the last day of registration, the board of police commissioners of the city of New York, the board of elections of the city of Brooklyn, and the city clerk of Buffalo shall furnish to each board of inspectors in their respective cities, blanks for the list of electors provided for in subdivision three of section thirty-two of the election law.

Subdivision 2. **Delivery of previous registers and poll books to inspectors.**— Each town clerk with whom the register of the last preceding general election in any election district, elsewhere than in a city or wholly within a village having five thousand inhabitants or more, shall have been filed, shall cause such register and one of the poll-books to be delivered to the board of inspectors of such district at the opening of its first meeting for the registration for any election. If a new election district

shall have been formed in a town since such general election, the clerk of such town shall, before the first meeting for registration thereafter in such new election district, make a certified copy of each register for such general election of each election district out of which such new district shall have been formed, and shall cause such certified copy to be delivered to the board of inspectors of such new election district at the opening of such meeting for registration. Such board, at such meeting, shall place upon the register of electors all persons whose names are upon such copies who are qualified to vote in such election district at the election for which such meeting is held, except the names of persons who are required to personally appear for registration. If a new election district shall have been formed in a city since such general election, the clerk or board with whom the register of electors for such last preceding general election shall have been filed shall, before the meeting of the inspectors of election of such new district for registration for any other election, make a certified copy of each register of electors for such last preceding general election of each election district out of which such new election district is formed, and the inspectors of such new election district shall, at such meeting for registration for such election, place upon the register of electors the names of all persons upon such copies who are qualified to vote in such election district at the election for which such meeting is held.

ARTICLE III.

Primaries, Conventions and Nominations.

Section 50. Definitions of primary and convention.
51. Notice of primary.
52. Organization and conduct of primaries.
53. Qualifications of voters at primaries.
54. Duties of chairman of primary.
55. Watchers and canvass of votes at primaries.
56. Party nominations.
57. Independent nominations.
58. Places of filing certificates of nominations.
59. Times of filing certificates of nominations.
60. Certification of nominations by secretary of state.
61. Publication of nominations.
62. Lists for town clerks and aldermen.
63. Posting town and village nominations.
64. Declination of nomination.
65. Objections to certificates of nominations.
66. Filling vacancies in nominations.

§ 50. **Definitions of primary and convention.**— As used in this article, a convention is an assemblage of delegates representing a political party or independent body, duly convened for the purpose of nominating candidates for office, electing delegates to conventions, electing officers for party organizations, or for the transaction of any other business relating to the affairs or conduct of the party or independent body; and a primary is any other assemblage of voters of a political party or independent body duly convened for any such purpose.

§ 51. **Notice of primary.**— No primary shall be held in a city or village having a population of over five thousand, as shown by the last state or federal enumeration, unless at least two days' notice thereof shall be published in a daily newspaper in such city or village, of the same politics with the political party giving the notice at least twice; but if no such newspaper is published in the same city or village where such primary is to be held, such notice shall be published in a weekly newspaper, if any, in such city or village of the same politics of the political party giving the notice before such primary is held. But if no such daily or weekly newspaper be so published in such city or village, such notice shall be posted in at least six public places in such city or village at least two days prior to the holding of such primary. Such primary shall be opened at such hour between nine o'clock in the forenoon and nine o'clock in the afternoon, as may be prescribed by the political party or independent body holding the same. Elsewhere than in such a city or village, every primary shall be called and held pursuant to notice given according to the regulations and usages of the political party or independent body holding it.

§ 52. **Organization and conduct of primaries.**— Every primary held by any political party or independent body for the purpose of choosing candidates for office, or the election of delegates to conventions, or for the purpose of electing officers of any political party or independent body, shall be presided over and conducted by officers to be selected in the manner prescribed by the rules or regulations of the political party or independent body holding such primary. If the rules and regulations of the political party or independent body calling it so require, or if it shall be, by a vote of the electors present, so resolved, or, if it be in a city or village having a population of over five thousand according to the last preceding federal or state enumeration, and five qualified electors of the district where it is held, belonging to the political party calling it, shall serve upon the secretary or chairman of the general committee of the party, or of its organi-

zation in such city or village, or upon the chairman of the district committee, a written demand, stating that they so require it, the following additional requirements, or such of them as may be specified in such demand, shall be complied with:

1. The chairman and other officers shall take the constitutional oath of office.

2. Candidates and delegates and officers of the organization or committee shall be chosen by ballot.

3. The meeting shall be held open not less than one hour for voting thereat.

4. The tellers shall keep a poll list of the name and residence of each person voting, and assist the secretary in the canvass of the votes.

5. An elector shall be appointed watcher for each candidate or set of candidates or delegates requesting the same.

6. The chairman shall publicly announce the number of votes cast for each candidate, and the result of the canvass at the completion thereof, and shall, if the primary be held in a city or village having a population of more than five thousand, as shown by the last preceding federal or state enumeration, file a statement of such results and the oath taken at such primary, and the poll list kept thereat in the office of the county clerk, if located in such city or village, and otherwise, in the office of the city or village clerk, and the papers so filed shall be public records and open to inspection and examination by any elector of the state.

§ 53. **Qualifications of voters at primaries.**— No person shall be entitled to vote at any primary unless he may be qualified to vote for the officers to be nominated thereat on the day of election. They shall possess such other qualifications as shall be authorized by the regulations and usages of the political party or independent body holding the same.

§ 54. **Duties of chairman of primary.**— The chairman may administer any oath required to be administered at any primary. He shall decide all questions that arise relating to the qualification of voters when the voter is challenged by an elector and shall reject such vote, unless the person offering the vote is willing to be, and shall be sworn, that he will truly answer all questions put to him touching his qualification as such voter, and shall state under oath that he is qualified to vote at such primary.

§ 55. **Watchers and canvass of votes at primaries.**— The ballot box used at any primary shall be examined by the secretary and by the tellers, if any, in the presence of the watchers,

it any, before any ballots are received to see that there are no ballots therein. Such watchers are entitled to be present from the commencement of the primary to the close of the canvass, and the signing of the certificates thereof. At the close of the canvass of the ballots cast for each candidate, the secretary shall publicly announce the vote and the result of the canvass.

§ 56. **Party nominations; choice of emblems for ballot.**—Nominations made as provided by this section shall be known as party nominations, and the certificate by which such nominations are certified shall be known as a party certificate of nomination. Party nominations of candidates for public office can only be made by a convention, or by a duly authorized committee of such convention of a political party which at the last preceding general election before the holding of such convention at which a governor was elected, cast ten thousand votes in the state for such officers; provided, however, that party nominations of candidates for public office to be voted for only in a town, or ward of a city, or a village or subdivision thereof, can only be made by a convention or primary or by a duly authorized committee of such convention or primary of a political party, which, at the last preceding general election before the holding of such convention or primary at which a governor was elected cast ten thousand votes in the state for such officer. The party certificate whereby such party nominations are certified shall contain the title of the office for which each person is nominated, the name and residence of each such person, and, if in a city, the street number of the residence of each such candidate and his place of business, if any. It shall also designate, in not more than five words, the name of the political party which the convention, primary or committee making such nomination represents. It shall be signed by the presiding officer and a secretary of such convention or primary, or, if made by a committee, by a majority of the members thereof, who shall add to their signatures their respective places of residence, and shall make oath before an officer qualified to take affidavits that the affiants were such officers of such convention or primary, or that they are members and constitute a majority of such committee, and that such certificates and the statements therein contained are true to the best of their information and belief. A certificate that such oath has been administered shall be made and signed by the officer before whom the same was taken, and attached to such certificate of nomination. When the nomination is made by a committee, the certificate of nomination shall also contain a copy of the resolution passed at the convention

or primary which authorized such committee to make such nomination. A certificate of nomination filed pursuant to this section may upon its face appoint a committee of one or more persons for the purposes specified in section sixty-six of this act. When a party nomination is made by a state convention of a candidate or candidates to be voted for by the electors of the entire state, it shall be the duty of such convention to select some simple device or emblem to designate and distinguish the candidates of the political party making such nominations or nomination. Such device or emblem shall be shown by a representation thereof upon a certificate signed and duly executed by the presiding officer and a secretary of said convention, which certificate shall be filed with the secretary of state, and such device or emblem, when so filed, shall in no case be used by any other party or independent body. When any independent body shall make a like nomination, as provided by the fifty-seventh section of this act, it shall be the duty of the persons who shall sign and execute the certificate of nomination of such candidate or candidates, to likewise select some simple device or emblem to designate and distinguish the candidate of such independent body making such nomination, and such device or emblem shall be shown by the representation thereof upon a certificate signed and duly executed by the proper parties authorized for that purpose. The device or emblem so chosen, when filed as aforesaid, shall be used to designate and distinguish all the candidates of the same political party or independent body nominated by such political party or independent body, or duly authorized committee, or primary thereof, in all districts of the state. The device or emblem chosen, as aforesaid, may be the representation of a star, an animal, an anchor or any other appropriate symbol, but neither the coat of arms nor seal of any state, nor of the United States, the national flag, nor any religious emblem or symbol, nor the portrait of any person, nor a representation of a coin or of the currency of the United States shall be chosen as such distinguishing device or emblem. If the certificate of nomination of two or more different political parties or independent bodies shall designate the same, or substantially the same, device or emblem or party name, the officer with whom the certificates of nominations are filed shall decide which of said political parties or independent bodies is entitled to the use of such device, or emblem, or party name, being governed as far as may be, in his decision by priority of designation in the case of the device or emblem, and of use in the case of the party name. If the other nominating body shall present no other device or party name

after such decision, such officer shall himself select for such other nominating body another device or party name, so that no two different parties shall be designated by the same device or party name. If there be a division within a party, and two or more factions claim the same, or substantially the same device or name, the officer aforesaid shall decide between such conflicting claims, giving preference of device and name to the convention or primary, or committee thereof, recognized by the regularly constituted party authorities; and if the other faction or factions shall present no other device or party name, the said officer shall select a different device and party name for each such other faction, which shall be used upon the ballots to distinguish its ticket. If two or more conventions are called by different authorities, each claiming to represent the same party for that purpose, the said officer shall select a suitable device and party name to distinguish the candidates of one faction from those of the other, and the ballots shall be printed accordingly. Any questions arising with reference to any device, or to the political party or other name designated in any certificate of nomination filed pursuant to the provisions of this section, or of section fifty-seven of this article, or with reference to the construction, validity or legality of any such certificate, shall be determined in the first instance by the officer with whom such certificate of nomination is filed. Such decision shall be in writing, and a copy thereof shall be sent forthwith by mail by such officer to the committee, if any, named upon the face of such certificate, and also to each candidate nominated by any certificate of nomination affected by such decision. The supreme court, or any justice thereof, within the judicial district, or any county judge within his county, shall have summary jurisdiction upon complaint of any citizen, to review the determination and acts of such officer, and to make such order in the premises as justice may require, but such order must be made on or before the last day fixed for filing certificates of nominations to fill vacancies with such officer as provided in subdivision one of section sixty-six of this article. Such a complaint shall be heard upon such notice to such officer as the said court or justice or judge thereof shall direct. If any certificate of nomination of candidates to be voted for by the electors of the entire state, filed with the secretary of state, pursuant to the provisions of this act, shall omit to designate a device or emblem to distinguish the candidates of the political party or independent body making such nomination, it shall be the duty of the secretary of state to select a device or emblem for that purpose, and such device or

emblem so chosen shall be used to distinguish all candidates of that party or independent body throughout the state, whether such candidates are nominated for state, or for local offices; and if any certificate of nomination of candidates to be filled by the electors of a district less than the entire state shall be filed with the secretary of state, or with any other public officer pursuant to this article, by a political party or independent body which has made no nomination of candidates for offices to be filled by the electors of the entire state, and such certificate of nomination shall omit to designate a device or emblem to distinguish the candidates nominated in such certificate, it shall be the duty of the secretary of state or other public officer with whom such certificate of nomination is filed, to select a device or emblem to represent the candidates named in such certificate of nomination.

§ 57. **Independent nominations.**— Nominations made as provided by this section shall be known as independent nominations, and the certificate whereby such nominations are made shall be known as an independent certificate of nomination. Independent nominations of candidates for public office to be voted for by all the electors of the state can only be made by six thousand or more voters of the state; provided, however, that in making up such number at least fifty electors in each county of the state (the counties of Fulton and Hamilton to be considered as one county) shall subscribe to the certificate provided for in this section. Independent nominations of candidates for municipal offices to be voted for by all the electors of a municipality can only be made if in a city of the first class by two thousand electors of such city; if in cities of the second class by one thousand electors of such city, and in other cities by five hundred electors thereof. Independent nominations of candidates for a county office in a county in which there is a city of the first class can only be made by two thousand electors of such county. Independent nominations of candidates for public office other than municipal offices to be voted for in a district less than the whole state, but greater than a town or ward of a city, can only be made by one thousand electors or more of the district, except that five hundred voters or more of an assembly or school commissioner district, may make such nomination for member of assembly or school commissioner to be voted for in such district. Independent nominations of candidates for public office to be voted for only by the electors of a town, or a ward of a city, or a village, can only be made by one hundred electors or more of such town, ward or village, except that when such town, ward or village constitutes an assembly or school commissioner district,

five hundred or more electors shall be required as above to make such nomination for member of assembly or school commissioner. Independent nominations shall be made by a certificate subscribed by such electors, each of whom shall add to his signature his place of residence, and make oath that he is an elector and has truly stated his residence. The making of the said oath shall be proved by the certificate of the notary or other officer before whom the said oath is taken, and it shall be unnecessary for an elector who has subscribed a certificate of nomination as herein provided, to sign any affidavit as to the matters to which he has made oath as aforesaid. The certificate shall contain the titles of the offices to be filled, the name and residence of each candidate nominated, and if in a city, the street number of such residence and his place of business, if any; and shall designate in not more than five words the political or other name which the signers shall select, which name shall not include the name of any organized political party. All independent certificates of nomination shall, upon their face, designate and select a device or emblem to represent and distinguish the candidate of the independent body making such nominations, as provided by the fifty-sixth section of this act. The certificate may designate upon its face, one or more persons as a committee to represent the signers thereof, for the purposes specified by section sixty-six of this act. The signatures to the certificate of nomination need not all be appended to one paper. No person shall join in nominating more candidates for any one office than there are persons to be elected thereto, and no certificate shall contain the names of more candidates for any office than there are persons to be elected to such office.

§ 58. **Places of filing certificates of nomination.**— Certificates of nomination of candidates for office to be filled by the electors of the entire state, or of any division or district greater than a county, shall be filed with the secretary of state, except that each certificate of nomination of a candidate for member of assembly for the assembly district composing the counties of Fulton and Hamilton, shall be filed in the office of the county clerk of Fulton county, and a copy thereof certified by the county clerk of Fulton county shall be filed in the office of the county clerk of Hamilton county, so long as the said counties constitute one assembly district. Certificates of nomination of candidates for offices to be filled by only the electors or a portion of the electors of the city of New York or Brooklyn, shall be filed with the board of police commissioners of the city of New York, or the board of elections of the city of Brooklyn respectively. Certificates of nomination

of candidates for offices of any other city, or for officers of a village or town to be elected at a different time from a general election, shall be filed with the clerk of such city, village or town, respectively. All other certificates of nomination shall be filed with the clerk of the county in which the candidates so nominated are to be voted for. All certificates and corrected certificates of nomination, all objections to such certificates and all declination of nominations are hereby declared to be public records; and it shall be the duty of every officer or board to exhibit without delay, every such paper or papers to any person who shall request to see the same. It shall also be the duty of each such officer or board to keep a book which shall be open to public inspection, in which shall be correctly recorded the names of all candidates nominated by certificates filed in the office of such officer or board, or certified thereto, the title of the office for which any such nomination is made, the political or other name and emblem of the political party or independent body making such nomination; and in which shall also be stated all declinations of nominations or objections to nominations, and the time of filing each of the said papers.

§ 59. **The times of filing certificates of nomination.**—The different certificates of nomination shall be filed within the following periods before the election for which the nominations are made, to wit: Those required to be filed with the secretary of state, if party nominations, at least thirty and not more than forty days; if independent nominations, at least twenty-five and not more than forty days; those required to be filed with a county clerk, or the board of police commissioners of the city of New York, or the board of elections of the city of Brooklyn, or with the city clerk of any other city, if party nominations, at least twenty-five and not more than thirty-five days; if independent nominations, at least twenty, and not more than thirty-five days; those required to be filed with a town or village clerk, if party nominations, at least fifteen and not more than twenty days; if independent nominations, at least ten and not more than twenty days. In case of a special election ordered by the governor under the provisions of section four of the election law, the certificates of nominations for the office or offices to be filled at such special election shall be filed with the proper officer or board not less than fifteen days before such special election.

§ 60. **Certification of nominations by secretary of state.**—The secretary of state shall, fourteen days before the election, certify to the county clerk of each county, except New York and Kings, and to the board of police commissioners of the city of New York,

and to the board of elections of the city of Brooklyn, the name, residence and place of business, if any, of each candidate nominated in any certificate so filed for whom the electors of any such county or city, respectively, may vote, the title of the office for which he is nominated, the party or other political name specified in such certificate, and the emblem or device chosen to represent and distinguish the candidates of the political party or independent body making such nominations.

§ 61. **Publication of nominations.**—At least six days before an election to fill any public office the county clerk of each county, except New York and Kings, the board of police commissioners of the city of New York, shall cause to be published in not less than two nor more than four newspapers within such county or city respectively, a list of all nominations of candidates for offices to be filled at such election, certified to such clerk or board by the secretary of state, or filed in the office of such clerk or board, and in the city of Brooklyn the board of elections of the city of Brooklyn shall cause such publication to be made in the newspapers designated as corporation newspapers of said city. Such publication shall contain the name and residence, and if in a city, the street number of the residence and place of business, if any, and the party or other designation of each candidate, and a fac simile of the emblems or devices selected and designated as prescribed by the fifty-sixth and fifty-seventh sections of this act, to represent and distinguish the candidates of the several political parties or independent bodies. The city clerk of each city, except New York and Brooklyn, and the boards named in such cities, shall at least six days before an election of city officers thereof, held at a different time from a general election, cause like publication to be made as to candidates for offices to be filled at such city election in at least two newspapers published in such city. One of such publications shall be made in a newspaper which advocates the principles of the political party that, at the last preceding election for governor, cast the largest number of votes in the state for such office; and another of such publications shall be made in a newspaper which advocates the principles of the political party that at the last preceding election for governor cast the next largest number of votes in the state for such office. The clerk or board, in selecting the papers for such publications, shall select those which, according to the best information he can obtain, have a large circulation within such county or city. In making additional publications, the clerk or board shall keep in view the object of giving information, so far

as possible, to the voters of all political parties; and in no event shall additional publications be made in two newspapers representing the same political party. The clerk or board shall make such publication twice in each newspaper so selected in a county or city in which daily newspapers are published; but if there be no daily newspaper published within the county, one publication only shall be made in each of such newspapers. Should the county clerk find it impracticable to make the publication six days before election day in counties where no daily newspaper is printed, he shall make the same at the earliest possible day thereafter, and before the election.

§ 62. **Lists for town clerks and aldermen.**— The county clerk of each county, except New York and Kings, shall at least six days before election day, send to the town clerk of each town, and to an alderman of each ward in any city in the county, at least five and not more than ten printed lists for each election district in such town or ward, containing the name and residence, and if in a city, the street number of residence, and place of business, if any, and the party or other designation, and also a fac simile of the emblem or device of each political party or independent body nominating candidates to be voted for by the electors of the respective towns and wards. Such lists shall, at least three days before the day of election be conspicuously posted by such town clerk or alderman in one or more public places in each election district of such town or ward, one of which shall be at each polling place.

§ 63. **Posting town and village nominations.**— Each town and village clerk shall cause at least ten copies of a like list of all nominations to office filed with him to be conspicuously posted in ten public places in the town or village, at least one day before the town meeting or village election, one of which copies shall be so posted at each polling place of such town meeting or village election.

§ 64. **Declination of nomination** — The name of a person nominated for any office shall not be printed on the official ballot if he notifies the officer with whom the original certificate of his nomination is filed, in a writing signed by him and duly acknowledged, that he declines the nomination, or if nominated by more than one political party, or independent body, the name of a person so nominated shall not be printed on the ticket of a party or independent body whose nomination he shall in like manner decline. If the declination be of a party nomination filed with the secretary of state, such notification shall be given at least twenty-five days, and if an independent nomination, at least

twenty days before the election. If the declination be of a party nomination filed with a county clerk or the board of police commissioners of the city of New York, or the board of elections of the city of Brooklyn, or with the city clerk of any other city, such notification shall be given at least twenty days, and if of an independent nomination, at least eighteen days before the election. If the declination be of a party nomination filed with a town or village clerk, such notification shall be given at least ten days, and if of an independent nomination, at least seven days before the election. The officer to whom such notification is given, shall forthwith inform by mail or otherwise, the committee, if any, appointed on the face of such certificate as permitted by section fifty-six and fifty-seven of this act, and otherwise one or more persons whose names are attached to such certificate, that the nomination conferred by such certificate has been declined, and if such declination be filed with the secretary of state, such officer shall also give immediate notice by mail or otherwise, that such nomination has been declined, to the several county clerks or other officers authorized by law to prepare official ballots for election districts affected by such declination.

§ 65. **Objections to certificates of nomination.**—A written objection to any certificate of nomination may be filed with the officer with whom the original certificate of nomination is filed within three days after the filing of such certificate. If such objection be filed, notice thereof shall be given forthwith by mail to the committee, if any, appointed on the face of such certificate for the purposes specified in section sixty-six of this act, and also to each candidate placed in nomination by such certificate. The questions raised by such written objection shall be heard and determined as prescribed in section fifty-six of this act.

§ 66. **Filling vacancies in nominations, and correction of certificates.**— Subdivision 1. If a nomination is duly declined, or a candidate regularly nominated dies before election day, or is found to be disqualified to hold the office for which he is nominated, or if any certificate of nomination is found to be defective but not wholly void, the committee appointed on the face of such certificate of nomination, as permitted by sections fifty-six and fifty-seven of this act, may make a new nomination to fill the vacancy so created, or may supply said defect, as the case may be, by making and filing with the proper officer a certificate setting forth the cause of the vacancy or the nature of the defect, the name of the new candidate, the title of the office for which he is nominated, the name of the original candidate, the name of the political party or other nominating body which was inscribed

on the original certificate, and such further information as is required to be given by an original certificate of nomination; except that where a certificate is filed pursuant to this section to fill a vacancy it shall not be lawful to select a new emblem or device, but the emblem or device chosen to represent and distinguish the candidate nominated by the original certificate shall be used to represent and distinguish the candidate nominated, as provided by this section. The certificate so made shall be subscribed and acknowledged by a majority of the members of the committee, and the members of the committee subscribing the same shall make oath before the officer or officers before whom they shall severally acknowledge the execution of the said certificate that the matters therein stated are true to the best of their information and belief. Except in a case as provided for in subdivision two of this section, the said certificate shall be filed in the office in which the original certificate was filed, at least six days before the election, if filed in the office of a town or village clerk; at least fifteen days before the election if filed with the county clerk or the board of police commissioners of the city of New York, or the board of elections of the city of Brooklyn, or the city clerk of any other city; and at least fifteen days if filed with the secretary of state, and upon being so filed shall have the same force and effect as an original certificate of nomination. When such certificate is filed with the secretary of state, he shall, in certifying the nomination to the various county clerks and other officers, insert the name of the person who has been nominated as prescribed by this section, instead of that of the candidate nominated by the original certificate, or, if he has already sent forward his certificate, he shall forthwith certify to the proper clerks and other officers the name of the person nominated as prescribed by this section, and such other facts as are required to be stated in a certificate filed pursuant to this section. When no nomination shall have been originally made by a political party, or by an independent body for an office, or where a vacancy shall exist, it shall not be lawful for any committee of such party or independent body authorized to make nominations, or to fill vacancies, to nominate, or substitute the name of, a candidate of another party, or independent body for such office; it being the intention of this act that when a candidate of one party is nominated and placed on the ticket of another party or independent body, such nomination must be made at the time and in the manner provided for making original nominations by such party or independent body.

Subdivision 2. In case of the death of a candidate after the official ballots have been printed, and before election day, the vacancy may be filled by filing the proper certificate of nomination of a candidate to fill such vacancy, with the officer or board with whom the original certificate was filed, and it then shall be the duty of the officer or board furnishing the official ballots to prepare and furnish to the inspectors of election in the election districts affected adhesive pasters containing the name of the candidate nominated to fill the vacancy, and the title of the office for which he was nominated. The pasters shall be of plain white paper, printed in plain black ink and in the same kind of type used in printing the titles of the offices and the names of the candidates upon the official ballots, and shall be of a size as large and no larger than the space occupied upon the official ballot by the title of the office and the name of the candidate in whose place the candidate named upon the paster has been nominated. If the candidate be one of a group of candidates, such official paster shall contain the name of the candidate but not the title of the office. Whenever such pasters are provided, the officer or board furnishing them shall certify to the inspectors of election in the election districts affected by the vacancy, the name of the original candidate, the name of the new nominee, the title of the office for which the nomination is made, and the name of the political party or independent body making the nomination, and shall state the number of pasters furnished, which number shall be equal to the number of official ballots furnished for such district. Upon the delivery of said pasters, the inspectors of election shall sign a receipt for the same, which receipt shall be retained by the officer or board furnishing the pasters, and shall be part of the record of his or their office. The inspectors shall deliver the pasters to the ballot clerks, who are required to affix one of such pasters in the proper place and in a proper manner upon each official ballot before said ballot shall be delivered to a voter. When so affixed to the official ballot, the pasters shall be considered as being part of the official ballot. The ballot clerks shall include in their statement of ballots a statement showing the number of pasters received by them, the number of pasters affixed to official ballots and the number of unused pasters returned by them, the unused pasters to be enclosed in the package of ballots not delivered to voters. The use of any paster upon the official ballot otherwise than as herein provided is hereby declared a felony, punishable by imprisonment in a state prison for not less than one nor more than five years.

ARTICLE IV.

Official and Sample Ballots, Instruction Cards and Stationery.

Section 80. Official ballots for elections.
81. Form of general ballot.
82. Form of ballot for questions submitted.
83. Sample ballots, instruction cards and stationery.
84. Blank forms for election officers.
85. Number of official ballots.
86. Officers providing ballots and stationery.
87. Distribution of ballots and stationery.
88. Errors and omissions in ballots.
89. Unofficial ballots.

§ 80. **Official ballots for elections.**— Official ballots shall be provided at public expense at each polling place for every election at which public officers are to be elected directly by the people, except an election of school district officers or school officers of a city or village at which no other public officer is to be elected.

§ 81. **Form of general ballot.**— There shall be provided at each polling place at each election at which public officers are voted for, but one form of ballot for all the candidates for public office, and every ballot shall contain the names of all the candidates whose nominations for any office specified on the ballot have been duly made and not withdrawn, as provided in this act, together with the title of the office arranged in tickets under the titles of the respective political parties or independent bodies, as certified in the certificates of nomination. All ballots shall be printed in black ink on clear white, book paper, free from ground wood, five hundred sheets of which, twenty-five by thirty-eight inches in size, shall weigh sixty pounds, and which shall test for that size and weight at least twenty points on a Morrison tester. Every such ballot printed in accordance with the provisions of this act, shall contain a party device for each political party represented on the ticket in accordance with the provisions of section fifty-six of this act. The arrangement of the ballot shall, in general, conform as nearly as practicable to the plan hereinafter given. The lists of candidates of the several parties shall be printed in parallel columns, each column to be headed by the chosen device of such party, and the party name or other designation in such order as the secretary of state may direct, precedence, however, being given to the party which polled the highest number of votes for governor at the last preceding general election for such officer, and so on. The number of such columns shall exceed by

one the number of separate tickets of candidates to be voted for at the polling place for which the ballot is provided, except as otherwise provided in this section. The party name shall be printed in display, the name or designation of the office in brevier lower case, and the name of the candidate therefor in brevier capital type. The title of the office, together with the name of the candidate therefor shall be printed in a space one-half inch in depth, and at least two inches in width defined by light horizontal ruled lines, with a blank space on the left thereof, one-fourth of an inch wide, inclosed by heavier dark lines, which space (called the voting space) shall be of the same depth as the space containing the title of the office and the name of the candidate; provided, however, that when two or more persons are to be voted for, for the same office, for the same term, on the same party ticket, as for instance, presidential electors, the title of the office shall be printed in the first space only, which space shall be half an inch in depth and the several spaces in which only such candidates' names are printed, and the voting spaces to the left thereof, shall each be one-fourth of an inch in depth between the horizontal ruled lines. On the right of each ballot shall be a column in which shall be printed only the titles of the offices for which candidates may be voted for by the electors at the polling place for which the ballot is printed. Such column is designated as the "blank column," and in such column the voting spaces shall be omitted, but in all other respects such blank column shall be a duplicate of the political party columns upon such ballot. In the space in such column above the heavy ruled line shall be printed in great primer Roman condensed capitals the words "blank column," and below such words shall be printed in brevier capital type the following: "The elector may write in the column below, under the title of the office, the name of any person whose name is not printed upon the ballot, for whom he desires to vote." At elections at which presidential electors are to be voted for, the names of the candidates for president and vice-president shall be placed on the ticket immediately below the name of the party making the nominations, and above the heavy ruled line preceding the names of the presidential electors, and shall be printed in type known as great primer Roman condensed capitals. The heading of each party ticket, including the name of the party, the device above, and the circle between the device and such name, shall be separated from the rest of the ticket by a heavy printed line, and the circle above the name of the party shall be defined by heavier lines than the lines defining the blank spaces before the names of candidates, and such

circle shall be surrounded by the following, printed in heavy faced nonpareil type: "For a straight ticket, mark within this circle." Provided, however, that in the case of nominations provided for in section fifty-seven of this act, designated as "independent nominations," the ballot shall be so arranged that at the right of the last column for nominations designated in section fifty-six as "party nominations," the several tickets of the names of the candidates independently nominated shall be printed in one or more columns according to the space required, having above each of the tickets the political or other name selected to designate such independent nominations, and the circle and also the device or emblem to represent and distinguish the candidates of the several independent bodies making such nominations. The independent tickets occupying the same column shall be separated from each other by a solid black line one-eighth of an inch wide. At the top of the column, and above the first emblem in each of such columns for independent nominations, shall be printed in type known as great primer Roman condensed capitals the words "independent nominations." Each column upon the ballot shall be bordered on either side by a broad solid printed line one-eighth of an inch wide and the edge of the ballot on either side shall be trimmed off up to the border or solid line described. The ballots shall be so printed as to give each elector a clear opportunity to designate by a cross X mark in a large blank circle three-quarters of an inch in diameter, below the device, and above the name of the party at the head of the ticket or list of candidates, his choice of a party ticket and desire to vote for each and every candidate thereon, and by a cross X mark in a blank inclosed space, heretofore designated as the voting space, on the left of and before the name of each candidate, his choice of particular candidates. The ballot shall be printed on the same leaf with a stub, and separated therefrom by a perforated line. The part above the perforated line designated as the stub shall extend the entire width of the ballot, and shall be of sufficient depth to allow the instructions to voters to be printed thereon, such depth to be not less than two inches from the perforated line to the top thereof. Upon the face of each stub shall be printed in type known as brevier capitals the following:

"This ballot should be marked in one of two ways with a pencil having black lead. To vote a straight ticket, make a cross X mark within the circle above one of the party columns. To vote a split ticket, that is, for candidates of different parties, the voter should make a cross X mark before the name of each can-

didate for whom he votes. If the ticket marked in the circle for a straight ticket does not contain the names of candidates for all offices for which the elector may vote, he may vote for candidates for such offices so omitted, by making a cross X mark before the names of candidates for such offices on another ticket, or, by writing the names, if they are not printed upon the ballot, in the blank column under the title of the office. To vote for a person not on the ballot, write the name of such person under the title of the office in the blank column. Any other mark than the cross X mark used for the purpose of voting or any erasure made on this ballot, makes it void, and no vote can be counted hereon. If you tear, or deface, or wrongly mark this ballot, return it and obtain another."

On the back of the ballot, below the stub, and immediately at the left of the center of the ballot, shall be printed in great primer Roman condensed capitals the words: "Official ballot for," and after the word "for" shall follow the designation of the polling place for which the ballot is prepared, the date of the election, and a fac simile of the signature of the officer who has caused the ballots to be printed. Ballots for town meetings not held at the same time with a general election shall be indorsed "Town," and for village elections, "Village." On the back of the stub, and immediately above the center of the indorsement upon the back of the ballot, shall be printed the consecutive number of the ballot beginning with "No. 1," and increasing in regular numerical order. All of the official ballots of the same sort prepared by any officer or board for the same polling place, shall be of precisely the same size, arrangement, quality and tint of paper, and kind of type, and shall be printed with black ink of the same tint, so that when the stubs numbered as aforesaid shall be detached therefrom, it shall be impossible to distinguish any one of the ballots from the other ballots of the same sort, and the names of all candidates printed upon the ballot shall be in type of the same size and character. If two or more officers are to be elected to the same office for different terms, the term for which each is nominated shall be printed upon the ballot as a part of the title of the office. If at a general election one representative in congress is to be elected for a full term and another to fill a vacancy, the ballots containing the names of the candidate shall, as a part of the title of the office, designate the term to fill which such candidates are severally nominated. When no nomination has been made by a political party, as designated by section fifty-six, for an office to be filled at the election, the title of such office shall be printed in such

party column, and underneath such title shall be printed in brevier capital type the words "No nomination." No ticket or list of candidates shall be printed, under the name of any political party or independent body which contains more candidates for any office than there are persons to be elected to such office.

§ 82. **Form of ballot for questions submitted.**— Whenever the adoption of a constitutional amendment or any other proposition or question is to be submitted to the vote of the electors of the state, or of any district thereof, a separate ballot shall be provided by the same officers who are charged by law with the duty of providing the official ballots for candidates for public office. Such ballots shall comply with the requirements for official ballots for candidates for public office, in so far as such requirements are applicable thereto. Under the perforated line shall be clearly printed, in brevier lower case type, the question of the adoption of the constitutional amendment or other proposition or question upon which the electors within the district for which such ballot is provided may lawfully vote. If there be more than one constitutional amendment or proposition or question to be submitted to the voters of that district, the different amendments or propositions or questions shall be separately numbered and printed, and separated by a broad solid line one eighth of an inch wide. Opposite and before each such amendment, question or proposition so submitted, shall be printed two squares inclosed in ruled lines, one above the other. Preceding the upper one of such squares shall be printed the word "Yes," and preceding the lower one of such squares shall be printed the word "No." At the top of each such ballots, immediately above the perforated line, shall be printed in brevier capital type the following words only: "Notice to electors. For an affirmative vote upon any question submitted upon this ballot, make a cross X mark in the square after the word 'Yes.' For a negative vote, make a similar mark in the square following the word 'No.'" All such ballots for the same polling place shall be of the same color and size, and similarly printed, so that, after the removal of the stub, which shall be numbered as in cases of ballots for candidates for public office, it shall be impossible to identify or distinguish any one of such ballots from the others. On the back of each such ballot, below the stub, shall be printed in addition to the indorsement as prescribed for general ballots, the words "Questions submitted," so as to distinguish the said ballots from the official ballots for candidates for office.

§ 83. **Sample ballots and stationery.**— Sample ballots, equal in number to twenty-five per centum of the number of official ballots

provided therefor, shall also be provided for every polling place for which official ballots are required to be provided. Such sample ballots shall be printed on paper of a different color from the official ballot, and without numbers on the stubs, but shall, in all other respects, be precisely similar to the official ballots to be voted at that polling place. One of such sample ballots shall, at any time on the day of election, be furnished upon application to any elector entitled to vote at that polling place, and may be taken by him away from such polling place before receiving his official ballot or ballots. Twelve instruction cards, printed in English, and twelve printed in each of such other languages as the officer or officers charged with providing them shall deem necessary, shall also be provided for each such polling place, containing in clear, large type, full instructions for the guidance of electors in obtaining ballots for voting, in preparing their ballots for deposit in the boxes, in returning their ballots to the ballot clerks, and in obtaining new ballots in place of those returned, and, in smaller sized type, a copy of each of the sections of the penal code relating to crimes against the elective franchise. There shall also be provided two poll-books, a suitable number of markers, designated as "distance markers," to indicate the distance of one hundred feet from the polling place, two tally sheets and three complete election return blanks for the use of inspectors and ballot clerks in the forms hereinafter provided, heavy manilla envelopes for statements and returns, sealing wax, pencils having black lead only, pens, penholders, blotting paper and ink. All such articles herein enumerated are hereby designated as "stationery."

§ 84. **Blank forms for election officers.**— The officers charged with the duty of furnishing official ballots shall furnish to the board of inspectors of each election district, two tally sheet blanks, three ballot return sheet blanks, three election return sheet blanks, one of which shall be indorsed "original return," the other "copies of the original return," three blanks for the report of assisted and challenged electors, which blanks shall be delivered to such board of inspectors as elsewhere provided.

Tally sheets.— The tally sheet blanks shall be printed as nearly as possible in the following form:

Tally sheets.— The tally sheet blanks shall be as nearly as possible in the following form: At the extreme left of such sheet there shall be a column headed "List of offices," in which shall be printed the titles of all the offices printed upon the official ballot, and in the same order. Each office shall be separated by a heavy ruled line running the full width of such sheet. There

(Sample) Tally-Sheet of Ballots Cast.

NOTE.—These columns belong at the extreme right of the tally-sheet.

LIST OF OFFICES.	1 REPUBLICAN TICKET.	2 Number of votes cast and counted for each candidate on straight ballots.	3 Number of votes cast and counted for each candidate on split ballots.	4 Total number of votes cast and counted for each candidate.	1 DEMOCRATIC TICKET.	2 Number of votes cast and counted for each candidate on straight ballots.	3 Number of votes cast and counted for each candidate on split ballots.	4 Total number of votes cast and counted for each candidate.	Total number of ballots not wholly blank on which no vote was counted for the following offices.	Total number of wholly blank ballots.	Total number of void ballots.	Total number of ballots accounted for.
For Governor.....	LEVI P. MORTON...	290	𝍸	310	DAVID B. HILL.....	140	𝍸𝍸𝍸	165	𝍸	5	10	485
For Lieutenant-Governor ...	CHAS. T. SAXTON..	290	𝍸𝍸	303	WM. F. SHEEHAN ...	140	𝍸𝍸𝍸	160	𝍸//	5	10	485
For County Clerk....	JOHN DOE.....	290	𝍸𝍸𝍸	315	RICHARD ROE.....	140	𝍸	145	𝍸	5	10	485

NOTE.—A separate column must be provided for each ticket printed upon the ballot. Each office shall be separated by a ruled line running clear across the sheet, so that the names of all the candidates for the same office shall be upon the same line. By adding together the votes cast for all the candidates for a particular office, together with the number of ballots on which no vote was cast for that office, and the number of wholly blank and void ballots on which no vote was counted for any office, the sum should equal the total number of ballots voted. Unless it does, the count of the votes and ballots is wrong, and they should be recounted.

shall be printed thereon, in separate columns under the name of the respective parties the tickets of all the parties as they appear on the official ballot, so that the names of all candidates for the same office shall be upon the same line. Opposite and to the right of each party or independent ticket or list of candidates, shall be a column headed "Number of votes cast, and counted for each candidate on straight ballots," in which column and opposite every name, shall be entered the number of straight party votes counted (which number is the same for every candidate of that party). To the right of such column there shall be another column headed, "Number of votes cast and counted for each candidate on split ballots," and in such column there shall be entered by single marks, grouped into five marks, the votes canvassed for such candidates on the split ballots. To the right of such column shall be another column headed, "Total number of votes cast and counted for each candidate," in which shall be entered, opposite the name of each candidate, the total number of votes cast and counted for such candidate on both straight and split ballots. To the right of the last column for entering the total vote cast for candidates of any party, shall be a column headed, "Total number of *ballots* not wholly blank, on which no vote was counted for the following offices," and in such column shall be entered opposite the titles of the respective offices, by single marks, the number of ballots on which no vote was cast for any candidate for such office. To the right of such column shall be another column headed, "Total number of wholly blank ballots," in which column shall be entered opposite the title of each office the number of ballots found to be wholly blank. To the right of such column shall be another column headed, "Total number of void ballots," in which column shall be entered opposite each title of each office the number of ballots which were rejected as void. At the extreme right of such sheet there shall be a column headed, "Total number of ballots accounted for," in which shall be entered opposite each office the sum of the total vote cast for all candidates for the office, together with the number of ballots not wholly blank, on which no vote was counted for that office, the total number of wholly blank, and the total number of void ballots, and the votes cast, if any, for candidates for such office whose names are not printed upon the ballot. Such sum must equal the number of ballots voted, as shown by the ballot clerks' return of ballots, and if it does not, there has been a mistake in the count, and the ballots must be recounted for such office. In case a person is voted for whose name is not printed on the ballot, the poll clerks, who shall keep the tally sheets, shall enter such name and the votes therefor on the tally sheet. The

method of counting the votes shall be as provided in section one hundred and ten of the election law.

Sample.

Form of ballot return to be prepared by the ballot clerks, and attached to the original statement of canvass made by the inspectors and to each copy, in compliance with subdivision two of section one hundred and three of the election law:

1. The number of full sets of official ballots furnished to election district number (five) of the (town of Canandaigua), county of (Ontario), were..... 800
2. The number of sets of official ballots cancelled before delivery to voters by reason of one or more of the set being found defective in printing or mutilated, all of which were destroyed by us, were..... 5
3. The number of sets of official ballots spoiled and returned by voters, all of which were destroyed by us, were 10
4. The number of sets of official ballots returned to the county clerk or other officer, unused, were..... 300
5. The number of sets of official ballots actually voted were 485
6. Total sets of official ballots accounted for are..... 800
7. The number of sets of detached stubs were..... 500
8. The number of sets of stubs on unused ballots were.... 300
9. The total sets of stubs accounted for are..... 800

We hereby certify that the foregoing ballot return for election district number (five) of the (town of Canandaigua), county of (Ontario), for the election held November (5th, 1895), is correct.

(Signed.) .....

.....

Ballot Clerks.

Sample.

Inspectors' returns and statement of canvass.— *Original* official statement of the result of a (general) election, held on the (fifth) day of November (1895), in the (fifth) election district of the (town of Canandaigua), county of (Ontario), state of New York, made by the inspectors of election in and for said district, which return is made as provided in section one hundred and eleven of the election law.

RETURN OF BALLOTS VOTED.

1. The whole number of general ballots actually voted, as verified by the return of the ballot clerks attached hereto were (four hundred and eighty-five)..... 485

2. The number of general ballots cast and found to be entirely blank, all of which were returned by us to the ballot box, were (five)..... 5

3. The number of general ballots cast which were rejected by us as "void" and on which no vote was counted for any candidate, all of which are in the sealed package returned herewith, and on each of which ballot is indorsed the reason for such rejection, were (ten) 10

4. The number of general ballots cast on which votes were counted for one or more candidates, all of which were returned to the ballot box (except those protested as being marked for identification), were (four hundred and seventy)..... 470

5. The total number of ballots accounted for by us are... 485

We certify the foregoing statement of ballots voted is correct in all respects.

Dated, this (fifth) day of November, (1895).

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.....
.....
.....

Board of Inspectors.

Statement and Return of the Votes for the Office of (Governor).

1. The number of ballots cast on which votes were counted for any candidate for office were (four hundred and seventy) 470

2. The number of ballots cast and counted on which there was no vote for the office of (governor) were (five).... 5

3. The whole number of ballots on which votes were counted for the office of (governor) were (four hundred and sixty-five)..... 465

4. Of which (Levi P. Morton) received (three hundred)..... 300

5. (David B. Hill) received (one hundred and sixty-five).... 165

Total 465

Statement and Return of the Votes for the Office of (Lieutenant-Governor).

1. The whole number of ballots cast on which votes were counted for any candidate for office were (four hundred and seventy)	470
2. The number of ballots cast and counted on which there was no vote for the office of (lieutenant-governor) were (seven)	7
3. The whole number of ballots on which votes were counted for the office of (lieutenant-governor) were (four hundred and sixty-three)	463
4. Of which (Charles T. Saxton) received (three hundred and three)	303
5. (William F. Sheehan) received (one hundred and sixty)	160
Total	463

Statement and Return of the Votes for the Office of (County Clerk).

1. The whole number of ballots cast on which votes were counted for any candidate for office were (four hundred and seventy)	470
2. The number of ballots cast and counted on which there was no vote for the office of (county clerk) were (ten)	10
3. The whole number of ballots on which votes were counted for the office of (county clerk) were (four hundred and sixty)	460
4. Of which (John Doe) received (three hundred and fifteen)	315
5. (Richard Roe) received (one hundred and forty-five)	145
Total	460

The number of general ballots "protested as marked for identification" (all of which are in the sealed package returned herewith together with the void ballots) each of which have been indorsed by us "protested as marked for identification," the mark or marking to which objection was made being specified upon the back of each such ballot, and all of which were counted

for the several candidates voted thereon in the foregoing returns, were (three).....(3)

But such number does not include any ballot which was rejected by us as void. Such void ballots are included in our return as "void" ballots on which no vote for any candidate was counted and are marked upon the back thereof "void" and indorsed with the reason for so declaring them. They are in the sealed package returned herewith together with the ballots "protested as being marked for identification."

We certify the foregoing statement is correct in all respects.

Dated, this (fifth) day of November, (1895).

.....
.....
.....
.....

Board of Inspectors.

Note.—A similar certificate is to be made at the bottom of each sheet or half sheet of this return. If ballots are voted on any constitutional amendment or question or proposition submitted, a similar return is to be included. Two certified copies of this original statement and return are to be made.

Blank for the Report of Assisted and Challenged Electors.

Three blank statements in the following form shall also be furnished to each board of inspectors, which shall, at the close of the election, be filled by them, and one original statement shall be attached to the original return, and a copy thereof to each copy of the original return.

1. The names of persons who were challenged, and the challenge not withdrawn, were ....., in all, three .....(3)
2. The names of persons who received assistance on account of physical disability, were ....., in all, five .....(5)
3. The names of persons who received assistance on account of being unable to write by reason of illiteracy, were ....., in all, two .....(2)

We certify the foregoing statement is correct.

Dated this (fifth) day of November, 1895.

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.....
.....
.....

Board of Inspectors.

§ 85. **Number of official ballots.**—The number of official ballots of each kind to be provided for each polling place for each election to be held thereat, except a town meeting or village election held at a different time from a general election, shall be two times as many ballots as there were names of electors on the register of electors of such district for such election at the close of the fourth meeting for such registration. In cities of the first class the officer or board charged with the duty of furnishing official ballots shall furnish twice as many official ballots of each kind to be provided for such election as there are electors entitled to vote thereat, as nearly as can be estimated by such officer or board. When but two days of registration are required there shall be a number equal to two times the number of names upon the register at the close of the second meeting for registration. The number of official ballots of each kind to be provided for each polling place for a town meeting or village or city election held at a different time from a general election, shall be two times the number of persons who will be entitled to vote thereat, as nearly as can be estimated by the officer charged with the duty of providing such ballots.

§ 86. **Officers providing ballots and stationery.**—The county clerk of each county except New York and Kings, the board of police commissioners of the city of New York and the board of elections of the city of Brooklyn shall provide the requisite number of official and sample ballots, cards of instruction, two pollbooks, distance markers, two tally sheets, inspectors' and ballot clerks' return sheets (three of each kind, and one of each to be marked "original"), pens, penholders, ink, pencils having black lead, blotting paper, sealing wax and such other articles of stationery as may be necessary for the proper conduct of the election, and the canvass of the votes, for each election district in such county or city respectively, for each election to be held thereat, except that when town meetings, city or village elections and elections for school officers are not held at the same time as a general election the clerk of such town, city or village, respectively, and the boards in the cities of New York and Brooklyn required to provide the same shall provide such official and sample ballots and stationery for such election or town meeting. Each officer or board charged with the duty of providing official ballots for any polling place shall have sample ballots and official ballots provided, and in the possession of such officer or board, and open to public inspection as follows: The sample ballots five days before the election, and the official ballots four days

before the election for which they are prepared, unless prepared for a village election or town meeting held at a different time from a general election, in which case the official ballot shall be so printed and in possession at least one day, and the sample ballots at least two days before such election or town meeting. During the times within which the same are open for inspection as aforesaid, it shall be the duty of the officer or board charged by law with the duty of preparing the same, to deliver a sample ballot of the kind to be voted in his district to each qualified elector who shall apply therefor, so that each elector who may desire the same may obtain a sample ballot, similar except as regards color and the number on the stub, to the official ballot to be voted at the polling place at which he is entitled to vote.

§ 87. **Distribution of ballots and stationery.**— The county clerk of each county except New York and Kings shall deliver at his office to each town or city clerk in such county on the Saturday before the election at which they may be voted, the official and sample ballots, cards of instructions and other stationery required to be provided for each polling place in such town or city for such election. It is hereby made the duty of each such town or city clerk to call at the office of such county clerk at such time and receive such ballots and stationery. In the cities of New York and Brooklyn, the boards required to provide such ballots and stationery shall cause them to be delivered to the board of inspectors of each election district at least one-half hour before the opening of the polls on each day of election. Each kind of official ballots shall be arranged in a package in the consecutive order of the numbers printed on the stubs thereof, beginning with number one. All official and sample ballots provided for such election shall be in separate sealed packages, clearly marked on the outside thereof with the number and kind of ballots contained therein, and indorsed with the designation of the election district for which they were prepared. The instruction cards and other stationery provided for each election district shall also be enclosed in a sealed package or packages with a label on the outside thereof showing the contents of each such package. Each such town and city clerk, receiving such packages shall cause all such packages so received and marked for any election district to be delivered unopened, and with the seals thereof unbroken to the inspectors of election of such election district one-half hour before the opening of the polls of such election therein. The inspectors of election receiving such packages shall give to such town or

city clerk, or board, delivering such packages a receipt therefor specifying the number and kind of packages received by them, which receipt shall be filed in the office of such clerk or board. Town, city and village clerks required to provide the same for town meetings, city and village elections held at different times from a general election, and the boards of the cities of New York and Brooklyn required to provide the same for elections held therein, respectively, shall in like manner, deliver to the inspectors or presiding officers of the election at each polling place at which such meetings and elections are held, respectively, the official ballots, sample ballots, instruction cards and other stationery required for such election or town meeting, respectively, in like sealed packages marked on the outside in like manner, and shall take and file receipts therefor in like manner in their respective offices.

§ 88. **Errors and omissions in ballots.**— Upon affidavit, presented by an elector, that an error or omission has occurred in the publication of the names or description of the candidates nominated for office, or in the printing of sample or official ballots, the supreme court, or a justice thereof, may make an order, requiring the county clerk or other officer or board charged with the duty in respect to which such error or omission occurs, to correct such error, or show cause why such error should not be corrected. The county clerk or such other officers or boards shall, upon their own motion, correct without delay any patent error in the ballots which they may discover, or which shall be brought to their attention, and which can be corrected without interfering with the timely distribution of the ballots to the inspectors for use at such election.

§ 89. **Unofficial ballots.**— If the official ballots required to be furnished to any town or city clerk, or board, shall not be delivered at the time required, or if after delivery shall be lost, destroyed or stolen, the clerk of such town or city, or such board, shall cause other ballots to be prepared as nearly in the form of the official ballots as practicable, but without the indorsement, and upon the receipt of ballots so prepared from such clerk or board, accompanied by a statement under oath that the same have been so prepared and furnished by him or them, and that the official ballots have not been so delivered, or have been so lost, destroyed or stolen, the inspectors of election shall cause the ballots so substituted to be used at the election in the same manner, as near as may be, as the official ballots. Such ballots so substituted shall be known as unofficial ballots.

ARTICLE V.

Conduct of Elections and Canvass of Votes.

Section 100. Opening the polls.
101. Persons within the guard rail.
102. Watchers; challengers, electioneering.
103. General duties of election officers.
104. Delivery of ballots to electors.
105. Preparation of ballots by electors.
106. Manner of voting.
107. When unofficial ballots may be voted.
108. Challenge and oaths.
109. Time allowed employes to vote.
110. Method of canvass.
111. Original statement of canvass and certified copies.
112. Proclamation of result.
113. Delivery and filing of papers relating to the election.
114. Judicial investigation of ballots.

§ 100. **Opening the polls.**— The inspectors of election, poll clerks and ballot clerks of each election district shall meet at the polling place therein at least one-half hour before the time set for opening the polls at each election for which official ballots are required to be provided, and shall proceed to arrange the space within the guard-rail and the furniture thereof, including the voting booths, for the orderly and legal conduct of the election. The inspectors of election shall then and there have the ballot boxes required by law for the reception of ballots to be voted thereat; the box for the reception of ballots found to be defective in printing or mutilated, before delivery to, and ballots spoiled and returned by electors; the box for the stubs of voted and spoiled ballots, the sealed packages of official ballots, sample ballots and instruction cards and distance markers, poll books, tally-sheets, return sheets and other stationery required to be delivered to them for such election; and if it be an election at which registered electors only can vote, the register of such electors required to be made and kept therefor. The inspectors shall thereupon open the sealed packages of instruction cards and cause them to be posted conspicuously, at least one, and if printed in different languages, at least one of each language, in each of the voting booths of such polling place, and at least three of each language in which they are printed in or about the polling place; shall open the sealed packages of

official ballots and sample ballots, and place them in charge of the ballot clerks, and shall place the poll-books in charge of the poll clerks, and shall cause to be placed at a distance of one hundred feet from the polling place the visible markers designated herein as "distance markers," to prohibit "loitering or electioneering" within such distance. They shall also, before any ballots are cast, see that the voting booths are supplied with pencils having black lead only, unlock the ballot boxes, see that they are empty, allow the watchers present to examine them, and shall lock them up again while empty in such manner that the watchers present and persons just outside the guard-rail can see that such boxes are empty when they are relocked. After such boxes are so relocked they shall not be unlocked or opened until the closing of the polls of such election, and, except as authorized by law, no ballots or other matter shall be placed in them after they are so relocked and before the announcement of the result of such canvass and the signing of the original statement of canvass and the two certified copies thereof. The instruction cards and distance markers posted as provided by law shall not be taken down, torn nor defaced during such election. The ballot clerks, with the official and sample ballots; the inspectors, with such boxes and register of electors, and the poll clerks, with their poll-books, shall be stationed as near each other as practicable within such inclosed space. One of the inspectors shall then make proclamation that the polls of the election are open, and of the time o'clock in the afternoon when the polls will be closed.

§ 101. **Persons within the guard-rail.**— From the time of the opening of the polls until the announcement of the result of the canvass of the votes cast thereat, and the signing of the official returns or statement of such canvass and the copies thereof, the boxes and all official ballots shall be kept within the guard-rail. No person shall be admitted within the guard-rail during such period, except inspectors, poll clerks, ballot clerks, duly authorized watchers, persons admitted by the inspectors to preserve order or enforce the law, persons duly admitted for the purpose of voting; provided, however, that candidates for public office voted for at such polling place may be present at the canvass of the votes.

§ 102. **Watchers; challengers; electioneering.**— Each political party or independent body duly filing certificates of nomination of candidates for offices to be filled at any such election, may, by a writing signed by the duly authorized county, city, town or village committee of such political party or independent body,

or by the chairman or secretary thereof charged with that duty and delivered to one of the inspectors of election, appoint not more than two watchers to attend each polling place thereof. Such committee, chairman or secretary thereof for a city, county, town or village shall not appoint watchers for any polling place outside of such city, county, town or village, respectively. Such watchers may be present at such polling place, and within the guard-rail, from at least fifteen minutes before the unlocking and examination of any ballot box at the opening of the polls of such election until after the announcement of the result of the canvass of the votes cast thereat, and the signing of the original statement of canvass and copies thereof by the inspectors. A reasonable number of challengers, at least one person of each such party or independent body, shall be permitted to remain just outside the guard rail of each such polling place, and where they can plainly see what is done within such rail outside the voting booths, from the opening to the close of the polls thereat. No person shall, while the polls are open at any polling place, do any electioneering within such polling place, or within one hundred feet therefrom, in any public street, or in any building or room or in a public manner, and no political banner, poster or placard shall be allowed in or upon such polling place during any day of registration or of the election.

§ 103. **General duties of election officers.**— Subdivision 1. One of the inspectors of election at each polling place shall be designated by the board of inspectors of election to receive the ballots from the electors voting; or if the majority of the inspectors shall not agree in such designation, they shall draw lots for such position. If it be an election for which electors are required to be registered, the other inspectors shall before any ballots are delivered by the ballot clerks to an elector, ascertain whether he is duly registered. The ballot clerks shall not deliver any ballot to such elector until the inspectors announce that he is so registered. As each elector votes, the inspectors shall check his name upon such register and shall enter therein in the column provided therefor opposite the name of such elector, the consecutive number upon the stub of the ballot or set of ballots voted by him. The inspector shall forthwith upon detaching the stub from any official ballot deposit the same in the box provided for detached stubs. In all proceedings of the inspectors acting as registrars, inspectors or canvassers, they shall act as a board, and, in case of a question arising, as to matters which may call for a determination by them, a majority of such board shall decide.

Subdivision 2. In addition to the duties hereinbefore enjoined upon them, the ballot clerks shall deliver official ballots to the electors in such order that the numerical order of the numbers printed on the stubs of the ballots so delivered, shall be the same as the order of the successive deliveries thereof, the ballot numbered one on the stubs being first delivered and so on. If, in addition to the general ballots there shall be a ballot containing a proposed constitutional amendment or other proposition or question, the ballots shall be delivered to the electors in such order that the numbers upon the stubs of both ballots so delivered shall be the same. If, in a case where more than one ballot is to be voted, the elector shall spoil one of a set of ballots, and shall be entitled to receive a new set under the provisions of this act, he shall return the spoiled set to the ballot clerks before new ballots are furnished to him. In case one of a set of ballots bearing the same number shall be found defective in printing or mutilated before the same is given to the elector, both ballots of that number shall have the stubs removed therefrom by the ballot clerks and such ballots shall be deposited in the box for spoiled and mutilated ballots, and the stubs in the box for detached stubs, and a memorandum shall be made by the ballot clerks of the number on such ballots and the fact that the set was not delivered to electors because defective in printing or mutilated. The ballot clerks shall, upon the delivery of official ballots to each elector, announce the elector's name and the number printed on the stub of each ballot so delivered. Upon the return of a ballot or set of ballots to them unvoted by any elector, they shall announce the name of the elector returning them and the printed number on the stubs of the ballots so returned, and shall at once remove the stubs from such returned ballots and deposit such stubs in the box for detached stubs, and such ballots in the box for spoiled and mutilated ballots. A memorandum shall be made by them of the number on such ballots, and of the fact that they were returned spoiled by electors. They shall immediately upon the closing of the polls take from the box containing them the spoiled and mutilated ballots, and after comparing the number thereof with the record of the same, made during the day, shall destroy them; and shall thereupon prepare and sign a written statement or return of ballots in the form provided for in section eighty-four of the election law. The original statement so made by them shall be attached to the original statement of the canvass made by the board of inspectors and a copy thereof to each copy of such original statement of canvass. They shall inclose all un-

used ballots, and all detached stubs, in a sealed package, and deliver the same to the chairman of the board of inspectors.

Subdivision 3. Each poll clerk at each polling place for which official ballots are required to be provided, shall have a poll-book for keeping the list of electors voting or offering to vote thereat at the election. Such book shall have six columns headed respectively, "Number of elector," "Names of electors," "Residence of electors," "Number on ballots delivered to electors," "Number on ballots voted," and "Remarks." Upon each delivery of an official ballot or set of official ballots by the ballot clerks to an elector, each poll-clerk shall enter upon his poll-book in the appropriate column, the number of the elector, in the successive order of the delivery of ballots thereto, the name of the elector, in the alphabetical order of the first letter of his surname, his residence by street and number, or if it have no street number, a brief description of the locality thereof, the printed number upon the stub of the ballots delivered to such elector, and the number on the ballots voted by him. If the ballot or set of ballots delivered to any elector shall be returned by him to the ballot clerk, and he shall obtain a new ballot or set of ballots, the poll clerks shall write opposite his name on the poll-books, in the proper column, the printed number on the stubs of such ballot or additional set of ballots. Each poll-clerk shall make a memorandum upon his poll-book opposite the name of each person who shall have been challenged and taken either of the oaths prescribed upon such challenge, or who shall have received assistance in preparing his ballot and shall also enter upon the poll-book opposite the name of such person the names of the election officers or persons who render such assistance, and the cause or reason assigned for such assistance by the elector assisted. As each elector offers his ballot or set of ballots which he intends to vote to the inspector, each poll-clerk shall report to the inspectors whether the number entered on the poll-book kept by him as the number on the ballot or set of ballots last delivered to such elector, is the same as the number on the stub of the ballot or set of ballots so offered. As each elector votes, each poll clerk shall enter in the proper column on his poll-book the number on the stub of the ballots voted. Upon the close of the polls of the election, the poll clerks and inspectors shall compare the poll-books with the registers and correct any mistakes found therein. The poll clerks shall also during the canvass of the votes, as prescribed by section one hundred and ten of the election law, make and complete the

tally sheets of the votes in the form provided by section eighty-four of the election law.

§ 104. **Delivery of ballots to electors.**— Subdivision 1. While the polls of the election are open, the electors entitled to vote and who have not previously voted thereat, may enter within the guard-rail at the polling place of such election for the purpose of voting, in such order that there shall not at any time be within such guard-rail more than twice as many electors as there are voting booths thereat, in addition to the persons lawfully within such guard-rail for other purposes than voting. The elector shall enter within the guard-rail through the entrance provided, and shall forthwith proceed to the inspectors and give his name, and, if in a city or village of five thousand inhabitants or over, his residence by street and number, or if it have no street number, a brief description of the locality thereof, and if required by the inspectors shall state whether he is over or under twenty-one years of age. One of the inspectors shall thereupon announce the name and residence of the elector in a loud and distinct tone of voice. No person shall be allowed to vote in any election district at any election where electors are required to be registered unless his name shall be upon the registration books of such election district. The right of any person to vote, whose name is on such register, shall be subject to challenge. If such elector is entitled to vote thereat, and is not challenged, or if challenged and the challenge be decided in his favor, one of the ballot clerks shall then deliver to him one official ballot or a set of official ballots, folded by such ballot clerk in the proper manner for voting, which is: First, by bringing the bottom of the ballot up to the perforated line, and second by folding both sides to the center, or towards the center, in such manner that when folded the face of each ballot shall be concealed, and the printed number on the stub and the indorsement on the back of the ballot shall be visible, so the stub can be removed without removing any other part of the ballot, and without exposing any part of the face of the ballot below the stub, and so that when folded the ballot shall not be more than four inches wide. No person other than an inspector or ballot clerk shall deliver to any elector within such guard-rail any ballot, and they shall deliver only such ballots as the voter is legally entitled to vote, and also the sample ballot when the same is asked for.

Subdivision 2. Any elector who shall, at the time of registration, have made oath of physical disability or illiteracy, as prescribed by the third subdivision of section thirty-four of the

election law; or, who, being duly registered, in an election district where personal registration by all electors is required by law, shall state under oath, to the inspectors of election, on the day of election, that, by reason of some accident, the time and place of which he must specify, or of disease, the nature of which he must also specify, he has, since the day upon which he registered, lost the use of both hands, or become totally blind, or afflicted by such degree of blindness as will prevent him, with the aid of glasses, from seeing the names printed upon the official ballot, or so crippled that he can not enter the voting booth and prepare his ballot without assistance; or any elector in an election district who is not required by law to personally register, who is unable to write by reason of illiteracy, or is physically disabled in one or more ways described in the third subdivision of section thirty-four of the election law, and who shall make the statement under oath to the inspectors in the form required in said subdivision, may choose two of the election officers, both of whom shall not be of the same political faith, to enter the booth with him, to assist him in preparing his ballots. At any town meeting or village election, where the election officers are all of the same political faith, any elector entitled to assistance as herein provided may select one of such election officers and one elector of such town or village of opposite political faith from such election officer so selected, to render such assistance. Such election officers or persons assisting an elector shall not in any manner request or seek to persuade or induce any such elector to vote any particular ticket, or for any particular candidate, and shall not keep or make any memoranda or entry of anything occurring within such booth, and shall not, directly or indirectly, reveal to any other person the name of any candidate voted for by such elector, or which ticket he has voted, except they be called upon to testify in a judicial proceeding for a violation of this act, and each election officer, before the opening of the polls for the election, shall make oath that he "will not in any manner request, or seek to persuade, or induce any elector to vote any particular ticket or for any particular candidate, and that he will not keep or make any memoranda or entry of anything occurring within the booth, and that he will not, directly or indirectly, reveal to any person the name of any candidate voted for by any elector or which ticket he has voted, or anything occurring within the voting booth, except he be called upon to testify in a judicial proceeding for a violation of the election law." The same oath shall be taken by any elector rendering such assistance, as provided for above, and any viola-

tion of this oath shall be a felony punishable upon conviction by imprisonment in a state prison for not less than two nor more than ten years. No elector shall otherwise ask or receive the assistance of any person within the polling place in the preparation of his ballot, or divulge to anyone within the polling place the name of any candidate for whom he intends to vote or has voted.

§ 105. **Preparation of ballots by electors.**— On receiving his ballot the elector shall forthwith and without leaving the inclosed space, retire alone to one of the voting booths, and without undue delay, unfold and mark his ballot as hereafter described. No elector shall be allowed to occupy a booth already occupied by another, or to occupy a booth more than five minutes in case all the booths are in use and electors waiting to occupy the same. It shall not be lawful to make any mark upon the official ballot other than the cross X mark used for the purpose of voting, with a pencil having black lead, and that only in the circles or in the voting spaces to the left of the names of candidates, or to write anything thereon other than the name or names of persons not printed upon the ballot for whom the elector desires to vote in the blank column under the proper title of the office; nor shall it be lawful to deface or tear a ballot in any manner, nor to erase any printed device, figure, letter or word therefrom, nor to erase any name or mark written thereon by such elector. Any ballot upon which there shall be found any mark other than the cross X mark used for the purpose of voting, or a name or names written otherwise than as heretofore provided, and any ballot which shall be found to be defaced or torn, or from which there shall have been erased any device, figure, letter or word, or which shall have been marked or written upon other than by a pencil having black lead, shall be wholly void and no vote thereon shall be counted. If an elector deface or tear a ballot or one of a set of ballots, or wrongly marks the same, he may successively obtain others, one set at a time, not exceeding in all three sets, upon returning each set of ballots so defaced or wrongly marked to the ballot clerks. The elector shall observe the following rules in marking his ballots:

1. If the elector desires to vote a straight ticket, that is, for each and every candidate of one party for whatever office nominated, he shall make a cross X mark in the circle above the name of the party at the head of the ticket.

2. If the elector desires to vote a split ticket, that is, for candidates of different parties, he must not make a cross X mark

in the circle above the name of any party, but shall make a cross X mark in the voting space before the name of each candidate for whom he desires to vote on whatever ticket he may be.

If the ticket marked in the circle for a straight ticket, does not contain the names of candidates for all offices for which the elector may vote, he may vote for candidates for such offices so omitted by making a cross X mark before the names of candidates for such offices on other tickets, or by writing the names, if they are not printed upon the ballot, in the blank column under the title of the office. If the elector desires to vote for any person whose name does not appear upon the ballot, he can so vote by writing the name with a pencil having black lead in the proper place in the blank column. The elector can vote blank for any office by omitting to make a cross X mark in any circle, and by making a cross X mark in the voting space before the name of every candidate he desires to vote for, except for the office for which he desires to cast a blank vote. In the case of a question submitted, the elector shall make a cross X mark in the blank square space on the right of and after the answer "Yes" or "No," which he desires to give on each such question submitted. One straight line crossing another straight line at any angle within a circle, or within the voting spaces, shall be deemed a valid voting mark.

§ 106. **Manner of voting.**— When the ballot or ballots which an elector has received shall be prepared as provided in section one hundred and five of this act, he shall leave the voting booth with his ballot folded so as to conceal the face of the ballot, but show the indorsement and fac simile of the signature of the official on the back thereof, and, keeping the same so folded, shall proceed at once to the inspector in charge of the ballot box, and shall offer the same to such inspector. Such inspector shall announce the name of the elector and the printed number on the stub of the official ballot so delivered to him in a loud and distinct tone of voice. If such elector be entitled then and there to vote, and be not challenged, or if challenged, and the challenge be decided in his favor, and if his ballot or ballots are properly folded, and have no mark or tear visible on the outside thereof, except the printed number on the stub and the printed indorsement on the back, and if such printed number is the same as that entered on the poll-books as the number on the stub or stubs of the official ballot or set of ballots last delivered to him by the ballot clerks, such inspector shall receive such ballot or ballots, and,

after removing the stub or stubs therefrom, in plain view of the elector, and without removing any other part of the ballot, or in any way exposing any part of the face thereof below the stub, shall deposit each ballot in the proper ballot box for the reception of voted ballots; and the stubs in the box for detached ballot stubs. Upon voting, the elector shall forthwith pass outside the guard-rail unless he be one of the persons authorized to remain within the guard-rail for other purposes than voting. No ballot without the official indorsement shall be allowed to be deposited in the ballot box except as provided by sections eighty-nine and one hundred and seven of the election law, and none but ballots provided in accordance with the provisions of the election law shall be counted. No official ballot folded shall be unfolded outside the voting booth. No person to whom any official ballot shall be delivered shall leave the space within the guard-rail until after he shall have delivered back all such ballots received by him either to the inspectors or to the ballot clerks, and a violation of this provision is a misdemeanor. When a person shall have received an official ballot from the ballot clerks or inspectors, as hereinbefore provided, he shall be deemed to have commenced the act of voting, and if, after receiving such official ballot, he shall leave the space inclosed by the guard-rail before the deposit of his ballot in the ballot box, as hereinbefore provided, he shall not be entitled to pass again within the guard-rail for the purpose of voting, or to receive any further ballots.

§ 107. **When unofficial ballots may be voted.**— If, for any cause, the official ballots shall not be provided as required by law at any polling place, upon the opening of the polls of an election thereat, or if the supply of official ballots shall be exhausted before the polls are closed, unofficial ballots, printed or written, made as nearly as practicable in the form of the official ballot, may be used.

§ 108. **Challenge.**— Subdivision 1.—A person may be challenged either when he applies to the ballot clerk for official ballots, or when he offers to an inspector the ballot he intends to vote, or previously by notice to that effect to an inspector by any elector. The name of the person challenging shall not be disclosed by an election officer unless required by a court or a judicial officer. It shall be the duty of each inspector to challenge every person offering to vote, whom he shall know or suspect not to be duly qualified as an elector. If any person offering to vote at any election shall be challenged in relation to his right to vote thereat, one of the inspectors shall tender to him the following preliminary oath: "You do swear (or affirm)

that you will fully and truly answer all such questions as shall be put to you touching your place of residence and qualification as an elector." The inspectors or one of them shall then question the person challenged in relation to his name; his place of residence before he came into that election district; his then place of residence, his citizenship; whether he be a native or naturalized citizen, and if the latter, when, where, and in what court, or before what officer he was naturalized; whether he came into the election district for the purpose of voting at that election; how long he contemplates residing in the election district, and all other matters which may tend to test his qualifications as a resident of the election district, citizenship and right to vote at such election at such polling place. If any person shall refuse to take such preliminary oath when so tendered, or to answer fully any such question which may be put to him, his vote shall be rejected. After receiving the answers of the person so challenged, the board of inspectors shall point out to him the qualifications, if any, in respect to which he shall appear to them to be deficient.

Subdivision 2. **General oath.**—If the person so offering to vote, shall persist in his claim to vote, and the challenge be not withdrawn, one of the inspectors shall then administer to him the following general oath: "You do swear (or affirm) that you are twenty-one years of age, that you have been a citizen of the United States for ninety days, and an inhabitant of this state for one year next preceding this election, and for the last four months a resident of this county, and for the last thirty days a resident of this election district, and that you have not voted at this election." If the person so offering to vote shall be challenged for causes stated in section two of article two of the constitution of this state, the following additional oath shall be administered by one of the inspectors: "You do swear (or affirm) that you have not received or offered, do not expect to receive, have not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid, or used, any money, or other valuable thing, as a compensation or reward for the giving, or withholding, of a vote at this election, and have not made any promise to influence the giving or withholding of any such vote, and that you have not made, or become directly or indirectly, interested in any bet or wager depending upon the result of this election." If the person so offering to vote shall be challenged on the ground of having been convicted of bribery or any infamous crime, the following additional oath shall be administered to him by one of the inspectors:

"You do swear (or affirm) that you have not been convicted of bribery or any infamous crime, or if so convicted, that you have been pardoned and restored to all the rights of a citizen." If any person shall refuse to take either oath so tendered his vote shall be rejected, but if he shall take the oath or oaths tendered him, his vote shall be accepted.

Subdivision 3. **Record of persons challenged.**— The inspectors of election shall keep a minute of their proceedings in respect to the challenging and administering oaths to persons offering to vote, in which shall be entered, by one of them, the name of every person who shall be challenged or take either of such oaths, specifying in each case whether the preliminary oath or the general oath, or both were taken. At the close of the election, the inspectors shall add to such minutes a certificate to the effect that the same are all such minutes as to all persons challenged at such election in such district.

§ 109. **Time allowed employes to vote.**—Any person entitled to vote at a general election held within this state, shall on the day of such election, be entitled to absent himself from any service or employment in which he is then engaged or employed, for a period of two hours, while the polls of such election are open. If such elector shall notify his employer before the day of such election of such intended absence, and if thereupon two successive hours for such absence shall be designated by the employer, and such absence shall be during such designated hours, or if the employer upon the day of such notice, makes no designation, and such absence shall be during any two consecutive hours while such polls are open, no deduction shall be made from the usual salary or wages of such elector, and no other penalty shall be imposed upon him by his employer by reason of such absence. This section shall be deemed to include all employes of municipalities.

§ 110. **Canvass of votes.**— Subdivision 1. **Preparation for canvass.**—As soon as the polls of an election are closed, the inspectors of election thereat shall publicly canvass and ascertain the votes, and not adjourn or postpone the canvass until it shall be fully completed. Any election officer who shall sign any original statement of canvass, or certified copies thereof, at any place other than the polling place, or at any time other than immediately after the canvass is completed, and any election officer or person who shall take from the polling place any such statement before it shall have been signed as herein provided, is guilty of a felony, and shall be punished, upon conviction thereof, by imprisonment in a state prison for not less than two nor more than five years. The room in which such canvass is

made shall be clearly lighted, and such canvass shall be made in plain view of the public. It shall not be lawful for any person or persons, during the canvass, to close or cause to be closed, the main entrance to the room in which such canvass is conducted in such manner as to prevent ingress or egress thereby. When two ballot boxes are provided for the reception of two different kind of ballots voted, the said ballot boxes shall be opened and the ballots therein canvassed in the following order, namely: First, the box containing the general ballots; secondly, the box containing the ballots cast upon any constitutional amendment or other proposition or question. The board of inspectors shall commence the canvass by comparing the two poll books with the registers used on election day, correcting any mistakes therein, and by counting the ballots found in the ballot boxes without unfolding them, except so far as to ascertain that each ballot is single, and by comparing the ballots found in each box with the number shown by the poll books to have been deposited therein. If the ballots found in any box shall be more than the number of ballots so shown to have been deposited therein, such ballots shall all be replaced without being unfolded in the box from which they were taken, and shall be thoroughly mingled therein, and one of the inspectors designated by the board shall, without seeing the same and with his back to the box, publicly draw out as many ballots as shall be equal to such excess and without unfolding them, forthwith destroy them. If two or more ballots shall be found in the ballot box so folded together as to present the appearance of a single ballot, they shall be destroyed if the whole number of ballots in such ballot box exceeds the whole number of ballots shown by the poll books to have been deposited therein, and not otherwise. If there lawfully be more than one ballot box for the reception of ballots voted at any one polling place, no ballot properly indorsed, found in the wrong ballot box, shall be rejected, but shall be counted in the same manner as if found in the proper ballot box, if such ballot shall not, together with the ballots found in the proper ballot box, make a total of more ballots than are shown by the poll books to have been deposited in the proper box. No ballot that has not the official indorsement shall be counted, except such as are voted in accordance with the provisions of the election law relating to unofficial ballots. The chairman only of the board of inspectors shall unfold the ballots taken from the ballot box.

Subdivision 2. **Intent of electors.**— No. 1. If the elector marks more names than there are persons to be elected to an office, or

if for any reason it is impossible to determine the elector's choice for an office to be filled, his vote shall not be counted for such office, but shall be returned as a blank vote for such office.

No. 2. If the elector shall have made a cross X mark in the circle at the head of a party ticket and before the names of individual candidates on the same ticket *only*, the voting marks in the voting spaces before the names of such candidates on such ticket shall be treated as surplusage, and his vote shall be counted for all the candidates on such ticket so marked in the circle.

No. 3. If the elector shall have made a cross X mark in the circle above the name of the party, some of whose candidates he desired to vote for, and he shall also have placed a cross X mark before the name of any candidate of any other party for any office, the cross X mark in the circle above the name of the party ticket must be deemed to have cast the elector's vote for every candidate on the ticket of such party so marked except for the candidate or candidates for the offices which are individually marked on other tickets, and the candidate or candidates so individually marked on such other ticket or tickets shall be deemed the choice of the voter for such office or offices; provided, however, that,

No. 4. Where two or more persons are to be voted for in any election district for the same office, as two or more justices of the supreme court, or presidential electors, and the names of the several candidates therefor are printed on any party ticket under the title of the office for which all are running, and the elector shall have made a voting mark in the circle at the head of the party ticket, and shall also have made a voting mark before one or more of the group of candidates for such office *on one other ticket only*, he shall be deemed to have cast his vote for all the candidates for such office on the party ticket so marked in the circle, except for such candidates of such party whose names are upon the same lines as the names of the candidates upon the other ticket so individually marked, and his vote shall be counted for the candidates of such party which he has so individually marked, unless in addition to marking the ticket in the circle at its head, he shall also have made a cross X mark before each one of the group of candidates for such office for whom he desires to vote on the ticket thus marked in the circle; and provided, further,

No. 5. That where two or more persons are to be voted for in any election district for the same office, as presidential electors or justices of the supreme court, and the names of the several

candidates therefor are printed on any party ticket under the title of the office for which all are running and the elector shall have made a voting mark in the circle at the head of the party ticket, and shall also have made a voting mark before the names of candidates for such office for which all are running, *upon more than one* other party ticket, he must also indicate by voting marks on the ticket so marked in the circle the individual candidates of the group of candidates so running upon such ticket for such office for whom he desires to vote, but if he has not, his vote shall only be counted for the candidates for such office which are individually marked.

No. 6. If the elector shall have marked a cross X mark in more than one circle at the head of the party tickets and if on either of such tickets there shall be one or more candidates for office for which no other candidate or candidates is or are named on such other ticket or tickets so marked in the circle his vote shall be counted for such candidate or candidates.

Subdivision 3. **Method of counting.**— The method of counting shall be as follows: The straight ballots, that is, the ballots on which all the candidates on one party ticket and no others are voted for shall be separated from the split ballots and counted, and the number of straight party votes for each candidate shall be entered in gross opposite his name on each tally sheet by each poll clerk. The chairman of the board shall then take the split ballots separately, and announce the vote for each candidate on each such ballot, in the order of the offices printed thereon, and each poll clerk shall make an accurate tally of the same. As the votes on each split ballot are counted, such ballot shall be passed to the other inspectors for verification. The poll clerks shall then add together all the votes for each candidate and the ballots wholly blank and void, together with the ballots on which no votes were counted for any candidate for such office, and shall enter the sum thereof in the proper column on the tally sheet. As soon as the count is completed for each office, the poll clerks shall submit the result to the inspectors for examination, and if found to be correct, the chairman shall at once announce the result. When a ballot is not void and an inspector of election or other election officer or duly authorized watcher shall, during the canvass of the vote, declare his belief that any particular ballot has been written upon or marked in any way for the purpose of identification, the inspectors shall write on the back of such ballot the words " objected to because marked for identification," and shall specify over their signatures upon the back thereof the mark or marking upon such ballot to

which objection is made. The votes upon each such ballot shall be counted by them, as if not so objected to. If requested by any watcher the inspectors shall, during the canvass, exhibit any and all ballots cast at such election or town meeting to such watcher, fully opened, and in such a condition that he may fully and carefully read and examine the same, but such inspector shall not allow any such ballot to be taken from his hand. Any person who shall place upon any ballot taken from the ballot box any mark or marking, or who shall tear or deface any such ballot with the intent of causing such ballot to be rejected as void, shall be guilty of a felony, and shall be punished upon conviction therefor by imprisonment in a state prison for a period not less than five nor more than ten years. In cities of the first class the chairman of the board of inspectors shall, forthwith upon the completion of the count of votes for each office, respectively, and the announcement thereof, deliver to the police officer on duty at such place of canvass a statement subscribed by the board of inspectors, stating the number of votes received by each candidate for such office. Such statement shall forthwith be conveyed by the said officer to the station-house of the police precinct in which such place of canvass is located, and he shall deliver the same inviolate to the officer in command thereof, who shall immediately transmit by telegraph, telephone or messenger, the contents of such statement to the officer commanding the police department of such city. Such statement shall be preserved for six months by the police, and shall be presumptive evidence of the result of such canvass for each such office.

§ 111. **Original statement of canvass and certified copies.**—Upon the completion of the canvass, the board of inspectors of election shall make and sign an original statement thereof showing the kind of election, the date when held; the number of the election district; the town or ward, and the city and county in which it was held, on the first page or pages of which there shall be return of the ballots voted, following which there shall be a separate return for each office of the votes cast for each candidate therefor in the form prescribed for such returns and statement in section eighty-four of the election law. At the end of the last detailed statement of votes cast for candidates, they shall add a statement of the number of general ballots protested as "marked for identification," which ballots shall be endorsed by the inspectors "protested as marked for identification," specifying the mark or marking to which objection is made over their signatures, and all of which shall be counted for the several candidates

voted for thereon. The inspectors shall also make as a part of their original statement a return of the number of void ballots rejected by them, and on such ballots no vote can be counted for any candidate. Each such ballot so declared void by the inspectors shall be endorsed upon the back thereof with the specific reason for such rejection. Such void ballots shall, together with the ballots which were protested as being marked for identification be secured in a separate sealed package, which shall be indorsed on the outside thereof with the names of the inspectors, the designation of the election district, and the number and kind of ballots contained therein. Such package shall be filed by the chairman of the board of inspectors with the original statement of the canvass. If ballots are voted on any constitutional amendment, proposition or question, a similar return of the ballots and votes cast thereon shall be made and included as a part of such original statement. Such inspectors shall, whenever unofficial ballots are voted, return all of such ballots in the package with the void and protested ballots. At the end of each return contained in such original statement of the canvass, and also at the bottom of each sheet, or half sheet thereof, the inspectors shall make and sign a certificate that the foregoing statement is correct. If any inspector, poll clerk or ballot clerk shall refuse to sign any return required of him by the election law he must state the grounds upon which such refusal is based upon such return over his signature. Unless such an election be an election of town, village or school officers, held at a different time from a general election, such inspectors shall forthwith and before adjourning and taking any recess make two certified copies of such original certified statement of the result of the canvass. Forthwith upon the completion of such original statement and of such certified copies thereof, and the proclamation of the result of the election as to each candidate, the ballots voted, except the void and protested ballots, shall be replaced in the box from which they were taken, together with a statement as to the number of such ballots so replaced. Each such box shall be securely locked and sealed, and shall be deposited with the officer or board furnishing such boxes. They shall be preserved inviolate for six months after such election and may be opened and their contents examined upon the order of the supreme court or a justice thereof, or a county judge of such county, and at the expiration of such time the ballots may be disposed of in the discretion of the officer or board having charge of them.

§ 112. **Proclamation of result.**— Upon the completion of such canvass and of the original statement and certified copies of the result thereof, the chairman of the board of inspectors shall make public oral proclamation of the whole number of votes cast at such election at such polling place for all candidates for each office; upon each proposed constitutional amendment or other question or proposition, if any, voted upon at such election; the whole number of votes given for each person, with the title of the office for which he was named on the ballot; and the whole number of votes given respectively for and against each proposed constitutional amendment or other question or proposition, if any, so submitted. The original statement of canvass and the certified copies thereof shall be securely and separately sealed with sealing wax in an envelope properly indorsed on the outside thereof by the inspectors, and shall be kept inviolate by the officers or board with whom they are filed until delivered, together with the sealed packages of void and protested ballots, to the county or city board of canvassers.

§ 113. **Delivery and filing of papers relating to the election.**— If the election be other than an election of town, city, village or school officers, held at a different time from a general election, the chairman of the board of inspectors of each election district, except in the cities of New York and Brooklyn, shall forthwith, upon the completion of such certified original statement of the result, deliver one certified copy thereof to the supervisor of the town in which the election, if outside of a city, is situated, and if in a city, to one of the supervisors of such city. If there be no supervisor, or he be absent or unable to attend the meeting of the county board of canvassers, such certified copy shall be forthwith delivered to an assessor of such town or city. One certified copy of such original statement of the result of the canvass, the poll-books of such election, and one of the tally sheets, shall be forthwith filed by such inspectors, or by one of them deputed for that purpose, with the town clerk of such town, or the city clerk of such city, as the case may be. The original certified statement of the result of the canvass, with the original ballot return prepared by the ballot clerk attached, the sealed package of void and protested ballots, the record as to challenged and assisted voters, and the sealed packages of detached stubs and unvoted ballots, and one of the tally sheets shall, within twenty-four hours after the completion of such canvass, be filed by the chairman of the board of inspectors, with the county clerk of the county in which the election district is situated. The register of electors and public copy thereof shall be filed as prescribed in

section thirty-five of the election law. In the city of New York, the original statement of canvass and the sealed package of void, and protested ballots, shall be filed within twelve hours after the completion of the canvass, with the board of police commissioners, together with one of the poll-books, and one of the tally sheets, properly certified by the poll clerks. One certified copy of such original statement, one poll-book and one tally sheet shall be filed within such time with the county clerk of New York county, and the other certified copy of such original statement with the clerk of the board of aldermen. In the city of Brooklyn, the original statement of canvass, the sealed package of void and protested ballots, one of the poll-books and one of the tally sheets, properly certified by the poll clerks, shall be filed within twelve hours after the completion of the canvass with the board of elections, one of the certified copies of the original statement of the canvass, one poll-book and one tally sheet shall be filed within such time in the office of the county clerk of Kings county, and the other certified copy of such original statement with the commissioner of police of the city of Brooklyn. The sealed packages of detached stubs, and ballots not used at the election, shall, in the cities of New York and Brooklyn, be given by the inspectors to the police, who shall return them to the board of police in the city of New York, and to the board of elections in the city of Brooklyn. All such packages of detached stubs and unused ballots shall be preserved inviolate in the office in which they are filed, for a period of six months from the time of filing thereof, and may be opened and examined upon the order of the supreme court or a justice thereof, or a county judge within such county, and at the expiration of such time may be disposed of in the discretion of the officer or board having custody of the same.

§ 114. **Judicial investigation of ballots.**— If any certified original statement of the result of the canvass in an election district shall show that any of the ballots counted at an election therein were objected to as marked for identification, a writ of mandamus may, upon the application of any candidate voted for at such election in such district, within twenty days thereafter, issue out of the supreme court to the board or body of canvassers, if any, of the return of the inspectors of such election district, and otherwise to the inspectors of election making such statement requiring a recount of the votes on such ballots. If the court shall, in the proceedings upon such writ, determine that any such ballot was marked for the purpose of identification, the court shall order such ballot and the votes thereon to be

excluded upon a recount of such votes. A like writ may in the same manner be issued to determine whether any ballot and the votes thereon which has been rejected by the inspectors as void, shall be counted. If in the proceedings upon such writ the court shall determine that the votes upon any such ballot rejected as void shall be counted, the court shall order such ballot and the votes thereon to be counted upon a recount of such votes. Boards of inspectors of election districts, and boards of canvassers, shall continue in office for the purpose of such proceedings.

ARTICLE VI.

County and State Boards of Canvassers.

Section 130. Organization of county boards of canvassers.
131. Production of original statements and copies thereof.
132. Correction of clerical errors in election district statements.
133. Correction in state or county board of canvassers' statement.
134. Proceedings of state board of canvassers upon corrected statement.
135. Statement of canvass by county boards.
136. Decisions of county boards as to persons elected.
137. Transmission of statements of county boards to secretary of state.
138. Organization of state board of canvassers.
139. Canvass by state board.
140. Certificates of election.
141. Record in office of secretary of state of county officers elected.

§ 130. Organization of county boards of canvassers.— The board of supervisors of each county except New York and Kings, shall be the county board of canvassers of such county. The boards of aldermen in the cities of New York and Brooklyn, respectively, shall be the county and city board of canvassers of their respective counties and cities. The members of the county board of canvassers of each county, except New York and Kings, shall meet at the office of the county clerk thereof on the Tuesday next after each election of public officers held in such county other than an election of town, city, village or district school officers held at a different time from a general election. Upon such meeting they shall choose one of their number chairman of such

board. Such county clerk, or if he be absent or unable to act, the deputy county clerk of such county, shall be the secretary of such board. The secretary of the board shall thereupon administer the constitutional oath of office to the chairman of the board, who shall then administer such oath to each member and to the secretary of the board. The members of the county and city board of canvassers of the county and city of New York, and of the county of Kings and city of Brooklyn, shall meet at the place for holding their regular meetings in the cities of New York and Brooklyn, respectively, on the Tuesday next after each election of public officers held in such county or city, respectively, or any district thereof. Upon meeting, they shall choose one of their number chairman of such board of canvassers. The clerk of such board, respectively, shall be the secretary of such board, or in his absence or inability to serve, his chief deputy shall be the secretary of the board. The secretary of the board shall thereupon administer the constitutional oath of office to the chairman of the board, who shall then administer such oath to each member and to the secretary of the board. A majority of the members of any board of canvassers shall constitute a quorum thereof. If, on the day fixed for such meeting, a majority of any such board shall not attend, the members of the board then present shall elect the chairman of the board and adjourn to some convenient hour of the next day. If such board, or a majority thereof, shall fail or neglect to meet within two days after the time fixed for organizing such board, the supreme court, or any justice thereof, or county judge within such county, may compel the members thereof by writ of mandamus to meet and organize forthwith.

§ 131. Production of original statements and copies thereof.—As soon as such board of county canvassers shall have been organized, the officer or board with which they were filed, shall deliver to such board of canvassers all the original statements of canvass and the certified copies thereof and the sealed packages of void and protested ballots. The copies of the original statements which have been delivered to members of the board or assessors shall then be delivered to the board. If any member of the county board of canvassers shall be unable to attend the first meeting of such board, he shall, at or before such meeting, cause to be delivered to the county clerk of such county all such copies of original statements delivered to him, and any original statement that may have come into his possession. If, at the first meeting of a county board of canvassers of any county, all such original statements of the result of the canvass of the

votes cast at such election in all the election districts in the county shall not be produced before the board, it shall adjourn to some convenient hour of the same or the next day, and the county clerk of such county shall, by special messenger or otherwise, obtain such missing original statements, if possible, otherwise he shall procure one of the certified copies thereof in time to be produced before such board at its next meeting. At such first meeting, or as soon as an original statement of the result of the canvass of the votes cast in such election in every election district of the county shall be produced before such board, or a copy thereof, in case the original can not be produced, the board shall, from such original statements and certified copies, and the sealed packages of void and protested ballots, proceed to canvass the votes cast in such county at such election.

§ 132. **Correction of clerical errors in election district statements.**— If, upon proceeding to canvass such votes, it shall clearly appear to any county board of canvassers that contain matters are omitted from any such statement or copy, which should have been inserted, or that any merely clerical mistakes exists therein, they shall have power, and such power is hereby given, to summon the inspectors of election whose names are subscribed thereto, before such board, and such inspectors shall forthwith meet and make such correction as the facts of the case require; but such inspectors shall not change or alter any decision before made by them, but shall only cause their canvass to be correctly stated. The board of county canvassers may adjourn from day to day not exceeding three days in all, for the purpose of obtaining and receiving such corrected statements.

§ 133. **Correction in state or county board of canvassers' statements.**— The supreme court may, upon affidavit presented by any elector, showing that errors have occurred in any statement or determination made by the state board of canvassers, or by any board of county canvassers, or that any such board has failed to act in conformity to law, make an order requiring such board to correct such errors, or perform its duty in the manner prescribed by law, or show cause why such correction should not be made or such duty performed. If such board shall fail or neglect to make such correction, or perform such duty, or show cause as aforesaid, the court may compel such board, by writ of mandamus, to correct such errors or perform such duty; and if it shall have made its determination and dissolved, to reconvene for the purpose of making such corrections or performing such duty. Such meeting of the board of state or county can-

vassers shall be deemed a continuation of its regular session, for the purpose of making such corrections, or otherwise acting as the court may order, and the statements and certificates shall be made and filed as the court shall direct, and shall stand in lieu of the original certificates and statements so far as they shall vary therefrom, and shall in all places be treated with the same effect as if such corrected statement has been a part of the original required by law. A special proceeding authorized by this section must be commenced within four months after the statement or determination in which it is claimed errors have occurred was made, or within four months after it was the duty of the board to act in the particular or particulars as to which it is claimed to have failed to perform its duty.

§ 134. Proceeding of state board of canvassers upon corrected statements.— When a new or corrected statement or certificate, made by a board of county canvassers, under the provisions of the preceding section, shall vary from the original statement or certificate with reference to votes for the offices of governor, lieutenant-governor, judge of the court of appeals, justice of the supreme court, secretary of state, comptroller, state treasurer, attorney-general, state engineer and surveyor, senator or representative in congress, or either of them, the county clerk, or other officer with whom the same is filed, shall forthwith prepare and transmit certified copies thereof to the officials mentioned in section one hundred and thirty-seven of this act, in the manner therein prescribed. The secretary of state shall thereupon file in his office the certified statement received by him, and obtain from the governor and comptroller the certified statements received by them, or either of them, and file the same in his office. He shall then, and within five days after any such certified copy of statements has been received by him, appoint a meeting of the state canvassers to be held at his office, or the office of the state treasurer or comptroller, and the said board of state canvassers shall, from such certified copies or statements, proceed to make a new statement of the whole number of votes given at the election referred to in such statement for the various offices above mentioned, or either of them, so far as the number of votes for any particular office or candidate has been changed by such new or corrected statements in the manner provided by section one hundred and thirty-nine of this act. Upon the new or corrected statement thus made, the said board of state canvassers shall then proceed to determine and declare what person or persons whose votes are affected by such new or corrected statement have been, by the greatest num-

ber of votes, duly elected to the various offices, or either of them, and the statement, certificate and declaration thereupon made shall stand in lieu of the original statement, declaration and certificate so far as the latter are changed by the former. The supreme court shall, upon application of a candidate interested in the result of such new or corrected statement, or of any elector in the county from which such statement came, and upon proof by affidavit that the same has been made and filed as herein provided, and that the state board of canvassers has neglected or refused to act thereon within the time above prescribed, require said board to act upon such new or corrected statement, and canvass the same as above provided, or show cause why it should not do so; and in the event of the failure of such board to act upon such new or corrected statement and canvass the same, or show cause as aforesaid, the court may compel such board by writ of mandamus to act upon and canvass such new or corrected statement, and make a statement, certificate and declaration in accordance therewith; and if the state board of canvassers shall have made a determination, and adjourned or dissolved before receiving such new or corrected statement, the court may compel such board to reconvene for the purpose of carrying out its order and direction; and for that purpose the meeting of said board shall be deemed a continuance of its regular session. The state board of canvassers and the secretary of state shall respectively have the same powers, and discharge the same duties with reference to statements made under this section, that they have and are charged with under the provisions of section one hundred and thirty-nine, and one hundred and forty, of this act.

§ 135. **Statements of canvass by county boards.**— Upon the completion by a county board of canvassers of their canvass of the votes so cast in such county, they shall make separate statements thereof as follows: One statement as to all the votes, if any, so cast for all the candidates for each office of elector of president and vice-president of the United States, for which the electors of such county were entitled to vote at such election; another statement as to all the votes so cast for the candidates for each state officer, except members of the assembly, and for each office of representative in congress for which the electors of such county, or any portion thereof, are entitled to vote; another statement as to all the votes, if any, cast upon every proposed constitutional amendment or other proposition or question duly submitted to all the electors of the state at such election; another statement as to all the votes cast for all the candidates for each office of member of assembly for which the

electors of such county, or any portion thereof, were entitled to vote at such election; another statement as to all the votes, if any, so cast for all the candidates for each county or other office, and office of school commissioner, for which the electors of such county, or any portion thereof, were entitled to vote at such election; another statement as to all the votes, if any, so cast upon any proposition or question upon which only the electors of such county were entitled to vote at such election. Each such statement shall set forth, in words written out at length, all the votes so cast for all the candidates for each such office; and if any such office was to be filled at such election by the electors of a portion only of such county all the votes cast for all the candidates for each office in any such portion of the county designating by its proper district number or other appropriate designation, the names of each such candidate and the number of votes so cast for each, the whole number of votes so cast upon any proposed constitutional amendment or other proposition or question, and of all the votes so cast in favor of and against the same respectively. In the cities of New York and Brooklyn the county board shall make a separate statement of the votes cast for all the municipal offices voted for by the electors of such respective cities or any portion thereof. If, upon such canvass, any statement or duly certified copy of statement of the result of the canvass of the votes of any election district in such county, there shall be included any ballot indorsed by the inspectors to the effect that it was objected to as marked for identification, the county board of canvassers shall count such ballot as though not so marked, unless otherwise ordered by a court of competent jurisdiction, but they shall add to each appropriate statement in which the counting of any such ballot or any portion thereof is included, a statement of the whole number of ballots so indorsed and counted and the number of votes on such ballot so counted for each candidate. If, upon such canvass, any statement or duly certified copy of a statement of the result of the canvass of the votes of any election district shall be included any ballot indorsed by the inspectors to the effect that it was rejected as void, the county board of canvassers shall not count such ballot unless otherwise ordered by a court of competent jurisdiction, but they shall add to each appropriate statement, a statement of the whole number of ballots so indorsed, and the number of votes on such ballots not counted for each candidate; such statements required by this section shall each be certified as correct over the signatures of the members of the board, or a majority of them, and shall be filed and recorded in the office

of the county clerk of such county. At the conclusion of the canvass of each election district, the void and protested ballots of such district shall be sealed by the board, and when the whole canvass shall be completed such sealed packages shall be filed in the office of the officer or board with whom they were originally filed, together with the original statements of canvass. The certified copies of such original statement of canvass shall be retained in the office of the secretary of the board of canvassers. The sealed packages of void and protested ballots may be destroyed at the end of six months from the time of the completion of such canvass, unless otherwise ordered by a court of competent jurisdiction.

§ 136. **Decisions of county board as to persons elected.**— Upon the completion of such statements, each county board of canvassers shall determine what person has been so elected to each office of member of assembly to be filled by the electors of such county, if constituting one assembly district, or in each assembly district therein, if there be more than one, and each person elected to each county office of such county to be filled at such election, and if there be more than one school commissioner district in such county, each person elected to the office of school commissioner to be filled at such election in each such district. The county clerk of the county of Hamilton shall forthwith transmit to the county clerk of the county of Fulton, a certified copy of the statement so filed and record it in his office, of the county board of canvassers of Hamilton county, as to all the votes so cast in Hamilton county for all the candidates and for each of the candidates for the office of member of assembly of the assembly district composed of Fulton and Hamilton counties; and the county clerk of Fulton county shall forthwith deliver the same to the Fulton county board of canvassers, who shall from such certified copy, and from their own statement as to the votes so cast for such office in Fulton county, determine what person was at such election, elected to such office. In the cities of New York and Brooklyn the statement of the county board as to the persons elected to municipal offices therein, shall be filed in the office of the county clerk, and a copy thereof in the office of the city clerk; or clerk to the board of aldermen. Such board of each county shall determine whether any proposition or question submitted to the electors of such county only, has been adopted or rejected. All such determinations shall be reduced to writing, and signed by the members of such board, or a majority of them, and filed and recorded in the office of the county clerk of such county, who shall cause a copy thereof, and

of the statements filed and recorded in his office, upon which such determination was based, to be published in at least one newspaper published in such county, and in such other newspapers published therein as the county board of canvassers shall direct. The clerk of each county shall prepare as many certified copies of each certificate of the determination of the county board of canvassers of such county as there are persons declared elected in such certificate, and shall, without delay, transmit such copies to the persons therein declared to be elected respectively.

§ 137. **Transmission of statements of county boards to the secretary of state.**— Upon the filing in the office of the county clerk of a statement of the county board of canvassers as to the votes cast for candidates for the offices of electors of president and vice-president, or as to the votes cast for candidates for state officers, except member of assembly and for representatives in congress, or as to the vote cast upon any proposed constitutional amendment or other proposition or question submitted to all the electors of the state, such county clerk shall forthwith make three certified copies of each such statement, and, within five days after the filing thereof in his office, transmit by mail one of such copies to the secretary of state, one to the governor, and one to the comptroller. The governor and comptroller shall forthwith, upon the receipt thereof by them deliver such certified copies to the secretary of state. If any certified copies shall not be received by the secretary of state on or before the last day of November next after a general election, or within twenty days after a special election, he shall dispatch a special messenger to obtain such certified copy from the county clerk required to transmit the same, and such county clerk shall immediately upon demand of such messenger at his office make and deliver such a certified copy to such messenger who shall, as soon as practicable, deliver it to the secretary of state. The county clerk of each county shall transmit to the secretary of state, within twenty days after a general election, and within ten days after a special election, a list of the name and residence of each person determined by the board of county canvassers of such county to be elected member of assembly, school commissioner, and to any county office; and on or before the fifteenth day of December in each year a certified copy of the official canvass of the votes cast in each such county by election districts at the last preceding general election. The secretary of state shall obtain from the governor and comptroller such certified copies so transmitted to them and file the same in his office.

§ 138. **Organization of state board of canvassers.**— The secretary of state, attorney-general, comptroller, state engineer and surveyor, and treasurer, shall constitute the state board of canvassers, three of whom shall be a quorum. If three of such officers shall not attend on a day duly appointed for a meeting of the board, the secretary of state shall forthwith notify the mayor and recorder of the city of Albany to attend such meeting, and they shall forthwith attend accordingly, and shall, with the other such officers attending, constitute such board. The secretary of state shall appoint a meeting of such board at his office, or at the office of the treasurer or comptroller on or before the fifteenth day of December next after each general election, and within forty days after each special election, to canvass the statements of boards of county canvassers of such election. He shall notify each member of the board of such meeting. The board may adjourn such meeting from day to day, not exceeding a term of five days.

§ 139. **Canvass by state board.**— Such board shall at such meeting proceed to canvass the certified copies of the statements of the county board of canvassers of each county in which such election was held. If any member of such board shall dissent from a decision of the board, or shall deem any of the acts or proceedings of the board to be irregular, and shall protest against the same, he shall state such dissent or protest in writing signed by him, setting forth his reasons therefor, and deliver it to the secretary of state, who shall file it in his office. Upon the completion of such canvass, such board shall make separate tabulated statements signed by the members of such board, or a majority thereof, of the whole number of votes cast for all the candidates for each office shown by such certified copies to have been voted for, and of the whole number of votes cast for each of such candidates, indicating the number of votes cast in each county therefor, and if the voters of not more than one district of the state were entitled to vote for such candidates therefor, the name and number of such district, and the name of each candidate and the determination of the board of the persons thereby elected to such office; the whole number of votes shown by such certified copies to have been cast upon each proposed constitutional amendment or other proposition or question shown by such copies to have been voted upon, the whole number of votes cast in favor of and against each, respectively, and the determination of the board as to whether it was adopted or rejected. Each such statement, dissent and protest, shall be delivered to the secretary of state, and recorded in his office.

§ 140. Certificates of election.— The secretary of state shall thereupon forthwith transmit a copy, certified by his signature and official seal, of each such statement as to votes cast for candidates for any office, to the person shown thereby to have been elected thereto. He shall prepare a general certificate, under the seal of this state, and attested by him as secretary thereof, addressed to the house of representatives of the United States, in that congress for which any person shall have been chosen, of a due election of the persons so chosen at each election as representative of this state in congress; and shall transmit the same to the house of representatives at their first meeting. If either of the persons so chosen at such election shall have been elected to supply a vacancy in the office of representative in congress, it shall be mentioned by the secretary of state in the statements to be prepared by him.

§ 141. Record in office of secretary of state of county officers elected.— The secretary of state shall enter in a book to be kept in his office the names of the respective county officers elected in this state, including school commissioners, specifying the counties and districts for which they were severally elected, and their places of residence, the offices to which they were respectively elected and the terms of office.

ARTICLE VII.

Electors of President and Vice-President, and Representatives in Congress.

Section 160. Representatives in congress.
161. Electors of president and vice-president.
162. Meeting and organization of electoral college.
163. Secretary of state to furnish list of electors.
164. Vote of the electors.
165. Appointment of messenger.
166. Other lists to be furnished.
167. Compensation of electors.
168. Laws repealed.

§ 160. Representatives in congress.— Representatives in the house of representatives of the congress of the United States shall be chosen in the several congressional districts at the general election held therein in the year eighteen hundred and ninety-six and every second year thereafter. If any such representative

shall resign, he shall forthwith transmit a notice of his resignation to the secretary of state, and if a vacancy shall occur in any such office, the clerk of the county in which such representative shall have resided at the time of his election, shall, without delay, transmit a notice thereof to the secretary of state.

§ 161. **Electors of president and vice-president.**— At the general election in November, preceding the time fixed by the law of the United States for the choice of president and vice-president of the United States, there shall be elected by general ticket as many electors of president and vice-president as this state shall be entitled to, and each elector in this state shall have a right to vote for the whole number, and the several persons to the number required to be chosen having the highest number of votes shall be declared and be duly appointed electors.

§ 162. **Meeting and organization of the electoral college.**— The electors of president and vice-president shall convene at the capitol on the second Monday in January next following their election, and those of them who shall be assembled at twelve o'clock, noon, of that day, shall immediately at that hour fill, by ballot, and by plurality of votes, all vacancies in the electoral college occasioned by death, refusal to serve or neglect to attend at that hour, of any elector, or occasioned by an equal number of votes having been given for two or more candidates. The electoral college being thus completed, they shall then choose a president, and one or more secretaries from their own body.

§ 163. **Secretary of state to furnish lists of electors.**—The secretary of state shall prepare three lists, setting forth the names of such electors, and the canvass under the laws of this state, of the number of votes given for each person for whose election any and all votes were given, together with the certificate of determination thereon, by the state canvassers; procure to the same the signature of the governor; affix thereto the seal of the state, and deliver the same thus signed and sealed to the president of the college of electors on the second Monday in January.

§ 164. **Vote of the electors.**— Immediately after the organization of the electoral college, the electors shall then and there vote by ballot for president and vice-president, one of whom at least shall not be an inhabitant of the same state with themselves. They shall name in their ballots the person voted for as president, and in distinct ballots, the person voted for as vice-president. They shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify,

and after annexing thereto one of the lists received from the secretary of state, they shall seal up the same, certifying thereon, that lists of the votes of this state for president and vice-president are contained therein.

§ 165. **Appointment of messenger.**— The electors shall then, by a writing under their hands, or under the hands of a majority of them, appoint a person to take charge of the list so sealed up, and to deliver the same to the president of the senate, at the seat of government of the United States, before the third Monday in the said month of January. In case there shall be no president of the senate at the seat of government, on the arrival of the person intrusted with the lists of the votes of the electors, then such person shall deliver the lists of votes in his custody into the office of the secretary of state of the United States.

§ 166. **Other lists to be furnished.**— The electors shall also forward forthwith, by the post-office in the city of Albany, to the president of the senate of the United States at the seat of government, and deliver forthwith to the judge of the United States court for the northern district of the state of New York, similar lists signed, annexed, sealed up and certified in the manner aforesaid.

§ 167. **Compensation of electors.**— Every elector of the state for the election of a president and vice-president of the United States, who shall attend at any election of those officers and give his vote at the time and place appointed by law, shall be entitled to receive for his attendance at such election, the sum of fifteen dollars per day, together with ten cents per mile each way, from his place of residence, by the most usual traveled route, to the place of meeting of such electors, to be audited by the comptroller upon the certificate of the secretary of state, and paid by the treasurer.

§ 168. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

SCHEDULE OF LAWS TO BE REPEALED BY THE ELECTION LAW.

LAWS OF—	Chapter.	Sections.
1842	130	All.
1844	331	All.
1847	240	All.
1854	286	All.
1855	513	All.

	Ch. 6, G. L.	L. 1896, ch. 909.
LAWS OF —	Chapter.	Sections.
1856	79	All.
1860	480	All.
1870	134	All.
1870	388	All.
1871	712	All.
1875	138	All.
1876	287	All.
1877	322	All.
1878	354	All.
1880	56	All.
1880	366	All.
1880	437	All
1880	460	All.
1880	553	All.
1881	137	All.
1881	163	All.
1882	154	All.
1882	366	All.
1882	410	1839 to 1844 inclusive, 1846, 1847 and 1848; 1850 to 1861 inclusive, 1864 to 1866 inclusive, and 1868 to 1929 inclusive, and 1931.
1883	380	All.
1883	422	All.
1885	446	All.
1887	265	All.
1888	583	For sections repealed in title XX, as amended, see chapter 236, Laws 1891, in this schedule.
1889	1	All.
1890	117	All.
1890	169	All.
1890	262	All.
1890	321	All.
1890	355	All.
1891	7	All.

L. 1896, ch. 909. Ch. 6, G. L.

LAWS OF—	Chapter.	Sections.
1891	236	Sections 3 to 25 inclusive, all after the word "board" in the last line of section 26, and sections 27 to 32 inclusive, of title XX of chapter 583, Laws of 1888, as amended by chapter 236, Laws 1891.
1891	296	All.
1891	336	All.
1892	680	All.
1893	233	All.
1893	274	All.
1893	370	All.
1894	61	All.
1894	275	All.
1894	302	All.
1894	348	2, 3, 4, 5 and 6.
1895	810	All.
1895	909	All.
1895	991	All.
1895	992	All.
1895	993	All.
1895	1034	All.

THE TAX LAW,

As amended to the commencement of the session of 1897.

L. 1896, ch. 908 — An act in relation to taxation, constituting chapter twenty-four of the general laws.

[Became a law May 27, 1896, taking effect June 15, 1896.]

CHAPTER XXIV OF THE GENERAL LAWS.

The Tax Law.

Article 1. Taxable property and place of taxation. (§§ 1-4.)
2. Mode of assessment. (§§ 20-41.)
3. Equalization of assessment and levy of tax. (§§ 50-59.)
4. Collection of taxes. (§§ 70-94.)
5. Collection of nonresident taxes. (§§ 100-109.)
6. Sales by comptroller for unpaid taxes and redemption of lands. (§§ 120-143.)
7. Sales by county treasurers for unpaid taxes and redemption of lands. (§§ 150-158.)
8. State board of tax commissioners, state board of equalization. (§§ 170-177.)
9. Corporation tax. (§§ 180-203.)
10. Taxable transfers. (§§ 220-242.)
11. Procedure. (§§ 250-264.)
12. Laws repealed; when to take effect. (§§ 280-281.)

ARTICLE I.

Taxable Property and Place of Taxation.

Section 1. Short title.
2. Definitions.
3. Property liable to taxation.
4. Exemption from taxation.
5. Taxation of lands leased or sold by the state.
6. No deduction allowed for indebtedness fraudulently contracted.

Section 7. When property of nonresidents is taxable.
8. Place of taxation of property of residents.
9. Place of taxation of real property.
10. Taxation of real property divided by line of tax district.
11. Place of taxation of property of corporations.
12. Taxation of corporate stock.
13. Stockholders of bank taxable on shares.
14. Place of taxation of individual bank capital.

Section 1. **Short title.**— This chapter shall be known as the tax law.

§ 2. **Definitions.**— 1. "Tax district" as used in this chapter, means a political subdivision of the state having a board of assessors authorized to assess property therein for state and county taxes.

2. "County treasurer" includes any officer performing the duties devolving upon such officer under whatever name.

3. The terms "land," "real estate" and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or grounds; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity, or any property, substance or product capable of transportation or conveyance therein or that is protected thereby; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state.

4. The terms "personal estate," and "personal property," as used in this chapter, include chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held; debts due by inhabitants of this state to persons not residing within the United States for the purchase of any real estate; public stocks, stocks in monyed* corporations, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

§ 3. **Property liable to taxation.**—All real property within this state, and all personal property situated or owned within this state, is taxable unless exempt from taxation by law.

§ 4. **Exemption from taxation.**— The following property shall be exempt from taxation:

1. Property of the United States.

2. Property of this state other than its wild or forest lands in the forest preserve.

3. Property of a municipal corporation of the state held for a public use, except the portion of such property not within the corporation.

4. The lands in any Indian reservation owned by the Indian nation, tribe or band occupying them.

5. All property exempt by law from execution, other than an exempt homestead.

6. Bonds of a municipal corporation heretofore issued for the purpose of paying up or retiring the bonded indebtedness of such corporation.

7. The real property of a corporation or association organized exclusively for the moral or mental improvement of men or women, or for religious, bible, tract, charitable, benevolent, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes, or for the enforcement of laws relating to children or animals, or for two or more of such purposes, and used exclusively for carrying out

* So in the original.

thereupon one or more of such purposes, and the personal property of any such corporation or association shall be exempt from taxation. But no such corporation or association shall be entitled to any such exemption if any officer, member or employe thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof, for any of such avowed purposes, be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association, or for any of its members or employes, or if it be not in good faith organized or conducted exclusively for one or more of such purposes. The real property of any such corporation or association entitled to such exemption held by it exclusively for one or more of such purposes, and from which no rents, profits or income are derived, shall be so exempt, though not in actual use therefor, by reason of the absence of suitable buildings or improvements thereon, if the construction of such buildings or improvements is in progress, or is in good faith contemplated by such corporation or association. The real property of any such corporation not so used exclusively for carrying out thereupon one or more of such purposes, but leased or otherwise used for other purposes shall not be so exempt; but if a portion only of any lot or building of any such corporation or association is used exclusively for carrying out thereupon one or more of such purposes of any such corporation or association, then such lot or building shall be so exempt only to the extent of the value of the portion so used, and the remaining portion of such lot or building to the extent of the value of such remaining portion shall be subject to taxation. Property held by an officer of a religious denomination shall be entitled to the same exemptions subject to the same conditions and exceptions as property held by a religious corporation.

8. Real property of an incorporated association of present or former volunteer firemen actually and exclusively used and occu-

pied by such corporation and not exceeding in value fifteen thousand dollars.

9. All dwelling-houses and lots of religious corporations while actually used by the officiating clergymen thereof, but the total amount of such exemption to any one religious corporation shall not exceed two thousand dollars. Such exemption shall be in addition to that provided by subdivision seven of this section.

10. The real property of an agricultural society permanently used by it for exhibition grounds.

11. The real property of a minister of the gospel or priest who is regularly engaged in performing his duties as such, or permanently disabled, by impaired health from the performance of such duties, or over seventy-five years of age, and the personal property of such minister or priest, but the total amount of such exemption on account of both real and personal property shall not exceed fifteen hundred dollars.

12. All vessels registered at any port in this state and owned by an American citizen, or association, or by any corporation, incorporated under the laws of the state of New York, engaged in ocean commerce between any port in the United States and any foreign port, are exempted from all taxation in this state, for state and local purposes; and all such corporations, all of whose vessels are employed between foreign ports and ports in the United States, are exempted from all taxation in this state, for state and local purposes, upon their capital stock, franchises and earnings, until and including December thirty-first, nineteen hundred and twenty-two.

13. A bond, mortgage, note, contract, account or other demand, belonging to any person not a resident of this state, sent to or deposited in this state for collection; the products of another state, owned by a nonresident of this state and consigned to his agent in this state for sale on commission for the benefit of the owner; moneys of a nonresident of this state, under the control or in the possession of his agent in this state, when transmitted to such agent for the purpose of investment or otherwise.

14. The deposits in any bank for savings which are due depositors, the accumulations in any domestic life insurance corporation,

held for the exclusive benefit of the insured, other than real estate and stocks, now liable for taxation; and the accumulations of any incorporated co-operative loan association upon the shares of such association held by any person.

15. Moneys collected in the course of the business of any corporation, association or society doing a life or casualty insurance business or both, upon the co-operative or assessment plan, and which are to be used for the payment of assessments, or for death losses or for benefits to disabled members.

16. The owner or holder of stock in an incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock.

17. The personal property in excess of one hundred thousand dollars of a mutual life insurance corporation incorporated in this state before April tenth, eighteen hundred and forty-nine.

§ 5. **Taxation of lands sold or leased by the state.**— All lands which have been sold by the state, although not conveyed, shall be assessed in the same manner as if such purchaser were the actual owner. Where land is leased by the state such leasehold interest shall be assessed to the lessee or occupant in the tax district where the land is situated.

§ 6. **No deduction allowed for indebtedness fraudulently contracted.**— No deduction shall be allowed in the assessment of personal property by reason of the indebtedness of the owner contracted or incurred in the purchase of nontaxable property or securities owned by him or held for his benefit, nor for or on account of any indirect liability as surety, guarantor, indorser or otherwise, nor for or on account of any debt or liability contracted or incurred for the purpose of evading taxation.

§ 7. **When property of nonresidents is taxable.**— Nonresidents of the state doing business in the state, either as principals or partners, shall be taxed on the capital invested in such business, as personal property, at the place where such business is carried on, to the same extent as if they were residents of the state.

§ 8. **Place of taxation of property of residents** — Every person shall be taxed in the tax district where he resides when the

assessment for taxation is made, for all personal property owned by him, or under his control as agent, trustee, guardian, executor or administrator. Where taxable personal property is in the possession or under the control of two or more agents, trustees, guardians, executors or administrators residing in different tax districts, each shall be taxed for an equal portion of the value of such property so held by them. Rents reserved in any lease in fee or for one or more lives or for a term more than twenty-one years and chargeable upon real property within the state, shall be taxable to the person entitled to receive the same, as personal property in the tax district where such real property is situated, and for the purpose of the taxation thereof such person is to be deemed a resident of such tax district. When a person shall have acquired a residence in a tax district, and shall have been taxed therein, such residence shall be presumed to continue for the purpose of taxation until he shall have acquired another residence in this state or shall have removed from this state. The residence of a person on July first shall be deemed his residence for the purpose of assessment and taxation during that year. If he shall have actually and in good faith changed his residence after July first, and before August first in any year, from one tax district to another, and shall make proof to the assessors at or before their last meeting for the correction of the assessment-roll of such change of residence and that he is assessed in the tax district to which he has removed, his name and the assessment of his personal property shall be stricken from the assessment-roll of the tax district where he resided on July first. In case of any controversy as to the proper place of taxation within the state of any person, his residence for purposes of taxation may be determined by the state board of tax commissioners, subject to review by the court.

§ 9. **Place of taxation of real property.**—When real property is owned by a resident of a tax district in which it is situated, it shall be assessed to him. When real property is owned by a resident outside the tax district where it is situated, it shall be assessed as follows:

1. When the property is occupied it must be assessed to the occupant.

2. If the occupant resides out of the tax district or if the land is unoccupied, it shall be assessed as nonresident, as hereinafter provided by article two.

§ 10. **Taxation of real property divided by line of tax district.** — If a farm or lot is divided by a line between two or more tax districts, it shall be assessed to the owner in the district in which he resides. If the owner is not a resident of either district, it shall be assessed to the occupant in the district in which he resides. If the land is unoccupied and the owner does not reside in either district, the portion of such farm or lot lying in each district shall be separately assessed therein. If there are several owners of such a farm or lot residing in different districts each containing a part thereof, a majority of them may elect in which district it shall be assessed by serving a written notice thereof on the assessors of each district during the month of May, but if such owners do not make such election, the property shall be assessed in the tax districts in which it is located. If the boundary line of a tax district passes through a building any portion of which is used as a dwelling, the owner of such building, if occupying the same or residing in either tax district, and otherwise, the person occupying such building as a dwelling house, may elect in which district such building and the adjacent land, owned, occupied and connected therewith, shall be assessed, by serving a written notice of such election on the assessors of each tax district during the month of May; but if such election is not made, the property shall be assessed in the tax districts in which it is located.

§ 11. **Place of taxation of property of corporations.**—The real estate of all incorporated companies liable to taxation, shall be assessed in the tax district in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital shall be assessed in the tax district where the principal office or place for transacting the financial concerns of the company shall be, or if such company have no principal office, or place for transacting its financial concerns, then in the tax district where the operations of such company shall be

carried on. In the case of toll bridges, the company owning such bridge shall be assessed in the tax district in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company are collected in several tax districts, the company shall be assessed in the tax district in which the treasurer or other officer authorized to pay the last preceding dividend resides.

§ 12. **Taxation of corporate stock.**— The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value.

§ 13. **Stockholders of bank taxable on shares.**— The stockholders of every bank or banking association organized under the authority of this state, or of the United States, shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes in the tax district where such bank or banking association is located, and not elsewhere, whether the said stockholders reside in said tax district or not.

§ 14. **Place of taxation of individual bank capital.**— Every individual banker shall be taxable upon the amount of capital invested in his banking business in the tax district where the place of such business is located and shall, for that purpose, be deemed a resident of such tax district.

ARTICLE II.

Mode of Assessment.

Section 20. Ascertaining facts for assessment.
21. Preparation of assessment-roll.
22. Assessment of state lands in forest preserve.
23. Banks to make report.
24. Bank shares, how assessed.
25. Individual banker, how assessed.
26. Notice of assessment to bank or banking association.
27. Reports of corporations.
28. Penalty for omission to make statement.
29. Assessment of real property of nonresident.
30. Surveys and maps of nonresident real property.
31. Corporations, how assessed.
32. Assessment of agent, trustee, guardian or executor.
33. Assessment of omitted property.
34. Debts owing to nonresidents of United States, how assessed.
35. Notice of completion of assessment-roll.
36. Hearing of complaints.
37. Correction and verification of tax-roll.
38. Filing of roll and notice thereof.
39. Assessors to apportion valuation of railroad, telegraph, telephone, or pipe line companies between school districts.
40. Neglect or omission of duty by assessors.
41. Abandonment of lot divisions.

§ 20. Ascertaining facts for assessment.— The assessors in each tax district may, by mutual agreement, divide it into convenient assessment districts not exceeding the number of such assessors. The assessors in each tax district shall annually, between May first and July first, ascertain by diligent inquiry all the property and the names of all the persons taxable therein.

§ 21. Preparation of assessment-roll.— They shall prepare an assessment-roll containing five separate columns, and shall, according to the best information in their power, set down:

1. In the first column the names of all taxable persons in the tax district.

2. In the second column the quantity of real property taxable to each person, with a statement thereof in such form as the commissioners of taxes shall prescribe.

3. In the third column the full value of such real property.

4. In the fourth column the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him.

5. In the fifth column the value of taxable rents reserved and chargeable upon lands within the tax district, estimated at a principal sum, the interest of which, at the legal rate per annum, shall produce a sum equal to such annual rents, and if payable in any other thing except money, the value of the rents in money to be ascertained by them and the value of each rent assessed separately, and if the name of the person entitled to receive the rent assessed can not be ascertained by the assessors, it shall be assessed against the tenant in possession of the real property upon which the rents are chargeable.

§ 22. **Assessment of state lands in forest preserve.**— All wild or forest lands within the forest preserve shall be assessed and taxed at a like valuation and rate as similar lands of individuals within the counties where situated. On or before August first in every year the assessors of the town within which the lands so belonging to the state are situated shall file in the office of the comptroller and of the board of fisheries, game and forest, a copy of the assessment-roll of the town, which, in addition to the other matter now required by law, shall state and specify which and how much, if any, of the lands assessed are forest lands, and which and how much, if any, are lands belonging to the state; such statements and specifications to be verified by the oaths of a majority of the assessors. The comptroller shall thereupon and before the first day of September following, and after hearing the assessors and the board of fisheries, game and forest, if they or any of them so desire, correct or reduce any assessment of state lands which may be in his judgment an unfair proportion to the remaining assessment of land within the town, and shall

in other respects approve the assessment and communicate such approval to the assessors. No such assessment of state lands shall be valid for any purpose until the amount of assessment is approved by the comptroller, and such approval attached to and deposited with the assessment-roll of the town, and therewith delivered by the assessors of the town, to the supervisor thereof or other officer authorized to receive the same from the assessors. No tax for the erection of a schoolhouse or opening of a road shall be imposed on the state lands unless such erection or opening shall have first been approved in writing by the board of fisheries, game and forest.

§ 23. **Banks to make report.**— The chief fiscal officer of every bank or banking association, organized under the authority of this state or of the United States, shall, on or before the first day of July, furnish the assessors of the tax district in which its principal office is located, and also the state board of tax commissioners, a statement, under oath, of the condition of such bank or banking association, on the first day of June next preceding, stating the amount of its authorized capital stock, the number of shares and the par value of the shares thereof, the amount of stock paid in, the data and rate per centum of each dividend declared by it during the year, the capital employed by it during the year, the amount of its surplus, if any, the amount, value and location of its real estate, a complete list of the names and residences of its stockholders, and the number of shares held by each, and such other data, information or matters as may be prescribed by the state board of tax commissioners, who shall furnish blanks upon which such reports shall be made, and prescribe the form of verification thereto, and such commissioners may, at any time, require a further and fuller report. In case of neglect or refusal on the part of any bank, corporation or association to report, as herein prescribed, or to make other or further reports as may be required by the commissioners of taxes, such bank, corporation or association shall forfeit the sum of one hundred dollars for each failure, and the additional sum of ten dollars for each day such failure continues, and an action therefor shall be prosecuted by the state board of tax commissioners.

There shall, in addition to such report, be kept in the office of every such bank or banking association a full and correct list of the names and residences of all the stockholders therein and of the number of shares held by each, and such list shall be subject to the inspection of the assessors and the board of commissioners of taxes at all times. The list of stockholders furnished by such bank, corporation or association shall be deemed to contain the names of the owners of such shares as are set opposite them respectively, for the purposes of assessment and taxation.

§ 24. **Bank shares, how assessed.**— In assessing the shares of stock of banks or banking associations, organized under the authority of this state or the United States, each stockholder shall be allowed all the deductions and exceptions allowed by law in assessing the value of other taxable property owned by individual citizens of this state, and the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state. In making such assessment, there shall also be deducted from the value of such shares a sum which bears the same proportion to such value as the assessed value of the real property of such bank or banking association bears to the capital stock thereof. This is not to be construed as an exemption of the real estate of banks or banking associations from taxation.

§ 25. **Individual banker, how assessed.**— Every individual banker doing business under the laws of this state, must report before the fifteenth day of June under oath to the assessors of the tax district in which any of the capital invested in such banking business is taxable, the amount of capital invested in such banking business in such tax district on the first day of June preceding. Such capital shall be assessed as personal property to the banker in whose name such business is carried on.

§ 26. **Notice of assessment to bank or banking association.**— The assessors of every tax district shall within ten days after they have completed the assessment of the stock of a bank or banking association, give written notice to such bank or banking association of such assessment of the shares of its respective

shareholders and no personal or other notice to such shareholders of such assessment is required.

§ 27. **Reports of corporations.**— The president or other proper officer of every moneyed or stock corporation deriving an income or profit from its capital or otherwise shall, on or before June fifteenth, deliver to one of the assessors of the tax district in which the company is liable to be taxed and, if such tax district is in a county embracing a portion of the forest preserve, to the comptroller of the state, a written statement specifying:

1. The real property, if any, owned by such company, the tax district in which the same is situated and, unless a railroad corporation, the sums actually paid therefor.

2. The capital stock actually paid in and secured to be paid in excepting therefrom the sums paid for real property and the amount of such capital stock held by the state and by any incorporated literary or charitable institution, and

3. The tax district in which the principal office of the company is situated or in case it has no principal office, the tax district in which its operations are carried on.

Such statement shall be verified by the officer making the same to the effect that it is in all respects just and true. If such statement is not made within twenty days after the fifteenth day of June, or is insufficient, evasive or defective, the assessors may compel the corporation to make a proper statement by mandamus.

§ 28. **Penalty for omission to make statement.**— In case of neglect to furnish such statements within thirty days after the time above provided, the company so neglecting shall forfeit to the people of this state for each statement so omitted to be furnished, the sum of two hundred and fifty dollars, and it shall be the duty of the attorney-general to prosecute for such penalty upon information which shall be furnished him by the comptroller. Upon such statement being furnished and the costs of the suit being paid, the comptroller, if he shall be satisfied that such omission was not willful, may, in his discretion, discontinue such suit.

§ 29. **Assessment of real property of nonresident.**— The real

property of nonresidents of the tax districts shall be designated in a separate part of the assessment-roll and if it be a tract subdivided into lots or parts of a tract so subdivided, the assessors shall:

1. Designate it by its name, if known by one, or if not distinguished by a name or the name is unknown, state by what lands it is bounded.

2. Place in the first column the numbers of all unoccupied lots of any subdivided tract, without the names of the owner, beginning at the lowest number and proceeding in numerical order to the highest, but the entry of the name of the owner shall not affect the validity of the assessment.

3. In the second column and opposite the number of each lot, the quantity of land therein.

4. In the third column and opposite the quantity, the full value thereof.

5. If it be a part of a lot, the part must be distinguished by boundaries or in some other way by which it may be identified. If any such real property be a tract not subdivided or whose subdivisions can not be ascertained by the assessors, they shall certify in the roll that such tract is not subdivided, or that they can not obtain correct information of the subdivisions and shall set down in the proper column the quantity and valuation as herein directed. If the quantity to be assessed is a part only of a tract, that part, or the part not liable must be particularly described.

§ 30. **Surveys and maps of nonresident real property.**— If the assessors shall deem it necessary to have an actual survey made, to ascertain the quantity of any lot or tract of nonresident real property divided by a town line, they shall notify the supervisor, who shall cause the necessary surveys to be made at the expense of the town. If a part only of a tract of real property is liable to taxation as nonresident and the assessors can not otherwise designate such part, they shall notify the supervisor of the town, who shall cause a survey and two manuscript maps to be made for the purpose of ascertaining the situation and quantity of such part. One of such maps shall be delivered to the county treas-

urer and by him to be transmitted to the comptroller in case the county in which the land is situated embraces a part of the forest preserve; and in other counties it shall be retained by him. The other map shall be delivered to the assessors, who shall then complete the assessment of the tract and deposit the map in the town clerk's office for the information of future assessors. The expense of making such survey shall be immediately repaid to the supervisor out of the county treasury and added by the board of supervisors to the tax on such tract, distinguishing it from the ordinary tax.

§ 31. **Corporations, how assessed.**— The assessors shall assess corporations liable to taxation in their respective tax districts upon their assessment-rolls in the following manner:

1. In the first column the name of each corporation, and under its name the amount of its capital stock paid in and secured to be paid in; the amount paid by it for real property then owned by it wherever situated; the amount of all surplus profits or reserve funds exceeding ten per centum of their capital, after deducting therefrom the amount of said real property and the amount of its stock, if any, belonging to the state and to incorporated literary and charitable institutions.

2. In the second column the quantity of real property owned by such corporation and situated within their tax district.

3. In the third column the actual value of such real property.

4. In the fourth column the amount of the capital stock paid in and secured to be paid in and of all of such surplus profits or reserve funds as aforesaid after deducting the sums paid out for all the real estate of the company wherever the same may be situated and then belonging to it, and the amount of stock, if any, belonging to the people of the state and to incorporated literary and charitable institutions.

§ 32. **Assessment of agent, trustee, guardian or executor.**— If a person holds taxable property as agent, trustee, guardian, executor or administrator, he shall be assessed therefor as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment.

§ 33. **Assessment of omitted property.**— The assessors of any tax district shall, upon their own motion, or upon the application of any taxpayer therein, enter in the assessment-roll of the current year any property shown to have been omitted from the assessment-roll of the preceding year, at the valuation of that year, or if not then valued, at such valuation as the assessors shall determine for the preceding year, and such valuation shall be stated in a separate line from the valuation of the current year.

§ 34. **Debts owing to nonresidents of the United States, how assessed.**— Every agent in any county of a nonresident creditor having debts owing to him, taxable in any county of the state, shall annually, on or before June first, furnish to the county treasurer of the county where the debtor resides, a true and accurate statement verified by his oath, of such debts owing on the first day of May next preceding in each town or ward in such county. The county treasurer shall, immediately upon the receipt of such statement, make out and transmit to the assessors of every tax district in the county in which any such debtor resides, a copy of so much of such statement as relates to the tax district of such assessors, with the name of the creditor. The assessors on receipt of such statement from the county treasurer shall, within the time in which they are required to complete the assessment-roll, enter therein the name of such nonresident creditor, and the aggregate amount due him in such tax district on the first day of May next preceding, in the same manner as other personal property is entered on the roll, adding the name of the debtor owing such debt. Any agent neglecting or refusing without good cause to furnish such statement to the county treasurer shall forfeit to the county in which the debtor resides the sum of five hundred dollars, recoverable by the district attorney, if the existence of such debts was known to the agent.

§ 35. **Notice of completion of assessment-roll.**— The assessors shall complete the assessment-roll on or before the first day of August, and make out one copy thereof, to be left with one of their number, and forthwith cause a notice to be conspicuously posted in three or more public places in the tax district, stating

that they have completed the assessment-roll, and that a copy thereof has been left with one of their number at a specified place, where it may be seen and examined by any person until the third Tuesday of August next following, and that on that day they will meet at a time and place specified in the notice to review their assessments. In any city the notice shall conform to the requirements of the law regulating the time, place and manner of revising assessments in such city. During the time specified in the notice the assessor with whom the roll is left shall submit it to the inspection of every person applying for that purpose.

§ 36. **Hearing of complaints.**— The assessors shall meet at the time and place specified in such notice, and hear and determine all complaints in relation to such assessments brought before them, and for that purpose they may adjourn from time to time. Such complainants shall file with the assessors a statement, under oath, specifying the respect in which the assessment complained of is incorrect, which verification must be made by the person assessed or whose property is assessed, or by some person authorized to make such statement, and who has knowledge of the facts stated therein. The assessors may administer oaths, take testimony and hear proofs in regard to any such complaint and the assessment to which it relates. If not satisfied that such assessment is erroneous, they may require the person assessed, or his agent or representative, or any other person, to appear before them and be examined concerning such complaint, and to produce any papers relating to such assessment with respect to his property or his residence for the purpose of taxation. If any such person, or his agent or representative, shall willfully neglect or refuse to attend and be so examined, or to answer any material question put to him, such person shall not be entitled to any reduction of his assessments. Minutes of the examination of every person examined by the assessors upon the hearing of any such complaint shall be taken and filed in the office of the town or city clerk. The assessors shall, after said examination, fix the value of the property of the complainant and for that purpose may increase or diminish the assessment thereof.

§ 37. **Correction and verification of tax-roll.**—When the assessors, or a majority of them, shall have completed their roll, they shall severally appear before any officer of their county, authorized by law to administer oaths, and shall severally make and subscribe before such officer an oath in the following form: "We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment-roll all the real estate situated in the tax district in which we are assessors, according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof; and, also, that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons, respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief," which oath shall be written or printed on said roll, signed by the assessors and certified by the officer.

§ 38. **Filing of roll and notice thereof.**— The assessment-roll when thus completed and verified shall be filed on or before September first, in the office of the town or city clerk, there to remain for fifteen days for public inspection. The assessors shall forthwith cause a notice to be posted conspicuously in at least three public places in the tax district and to be published in one or more newspapers, if any, published in the town or city, that such assessment-roll has been finally completed and stating that it has been so filed and will be there open to public inspection. At the expiration of such fifteen days, the town or city clerk shall deliver such roll to a supervisor of the tax district embraced therein.

§ 39. **Assessors to apportion valuation of railroad, telegraph, telephone, or pipe line companies between school districts.**— The assessors of each town in which a railroad, telegraph, tele-

phone or pipe line company is assessed upon property lying in more than one school district therein, shall, within fifteen days after the final completion of the roll, apportion the assessed valuation of the property of each of such corporation among such school districts. Such apportionment shall be signed by the assessors or a majority of them, and be filed with the town clerk within five days thereafter, and thereupon the valuation so fixed shall become the valuation of such property in such school district for the purpose of taxation. In case of failure of the assessors to act, the supervisor of the town shall make such apportionment on request of either the trustees of any school district or of the corporation assessed. The town clerk shall furnish the trustees a certified statement of the valuations apportioned to their respective districts. In case of any alteration in any school district affecting the valuation of such property, the officer making the same shall fix and determine the valuations in the districts affected for the current year.

§ 40. **Neglect or omission of duty by assessors.** — The assessors, in the execution of their duties, shall use the forms and follow the instructions transmitted to them, from time to time, by the commissioners of taxes. If any assessor shall neglect or omit to perform any duty, the other assessors shall perform such duty and shall certify upon the assessment-roll the name of the delinquent assessor, stating therein the cause of such omission, and the assessment-roll, when otherwise made and completed in accordance with the requirements of this article, shall be deemed to be the assessment-roll of all the assessors. If the assessors shall neglect to meet for the purpose of hearing grievances any person aggrieved by the assessment may appeal to the board of supervisors at its next meeting, which shall have the same power to review and correct such assessment as the assessors have under this article. If any assessor shall refuse or neglect to perform any duty or do any act required of him by this article, he shall forfeit to the county the sum of fifty dollars, to be recovered by the district attorney.

§ 41. **Abandonment of lot divisions.**— Whenever more than ten years shall have elapsed after the subdivision of any tract of

land into lots, plots or sites, with or without proposed streets, the owner of such tract, or of any part thereof composed of two or more contiguous lots may, by an instrument in writing, duly executed and acknowledged and describing such land, disclaim and abandon such subdivision including any streets not opened, accepted or used by the public and which are not necessary for the use of an owner or occupant of any part of said tract; and thereupon such subdivision, as to the lands described in such instrument, shall be deemed abandoned and of no effect; and thereafter the lands described therein shall, for the purpose of taxation, be regarded as a single tract. If a map of such subdivision has been filed in the office of the county clerk or register of deeds, such instrument may be recorded in said office, and a notice of such record shall thereupon be indorsed by the clerk or register upon such map. This section shall not apply to a county embracing a portion of the forest preserve.

ARTICLE III.

Equalization of Assessment and Levy of Tax.

Section 50. Equalization by board of supervisors.
51. Description of real property of nonresidents.
52. Review of assessments against nonresident owners of rents reserved.
53. Correction of errors by board of supervisors.
54. Reassessment of property illegally assessed.
55. Levy of tax by supervisors.
56. Tax-roll and collector's warrant.
57. Statement of taxes upon certain corporations by clerk of supervisors.
58. Statement of valuation to be furnished to comptroller.
59. Abstract of warrant to be furnished county treasurer.

§ 50. **Equalization by board of supervisors.**— The board of supervisors of each county in this state, at its annual meeting, shall examine the assessment-rolls of the several tax districts in the county, for the purpose of ascertaining whether the valuations in one tax district bear a just relation to the valuations in

all the tax districts in the county; and the board may increase or diminish the aggregate valuations of real estate in any tax district, by adding or deducting such sum upon the hundred, as may, in its opinion, be necessary to produce a just relation between all the valuations of real estate in the county; but it shall, in no instance, change the aggregate valuations of all the tax districts from the aggregate valuation thereof as made by the assessors.

§ 51. **Description of real property of nonresidents.**— The board of supervisors of each county, at its annual meeting, shall examine the assessment-rolls of the several tax districts, and shall make such changes in the descriptions of the real property of nonresidents as may be necessary to render such descriptions sufficiently definite for the purposes of collection of taxes by sale thereof. If a sufficiently definite description can not be obtained during the session, the board shall cause the same to be obtained for the next annual session, and the property shall not be taxed until such description is obtained, and shall then be taxed for the year so omitted, in the manner provided for taxing omitted lands.

§ 52. **Review of assessment against nonresident owners of rents reserved.**— If an assessment of taxable rents shall have been made against any person in any tax district of which he is not an actual resident, the board of supervisors of the county shall have the same power and authority in all respects, and it shall be its duty to correct such assessments as to the valuation of such rents and as to the gross amount for which such persons shall be assessed therefor, as the assessors of a tax district have as to the assessment of personal property of an actual resident of such tax district. The board may reduce the amount of any such assessment, if necessary, to make such assessment just when compared with the other assessments of property upon such roll.

§ 53. **Correction of errors by board of supervisors.**— If it shall be made to appear to the board of supervisors of any county, upon the verified petition of the assessors of any tax district;

First. That any property taxable therein has, by any mistake in transcribing or copying the assessment-roll of the preceding

year, been placed on the assessment-roll delivered to the supervisor, at a valuation less than actually appearing upon the original roll signed by the assessors, such board shall insert in the assessment-roll of the current year an assessment of the property upon the valuation equal to the difference between the actual valuation made by the assessors and the amount at which, by such mistake, the property was placed upon the roll of the preceding year, and tax the same at the rate per centum imposed upon property in such tax district in the year in which the mistake occurred.

Second. That any taxable property therein has been omitted from the assessment-roll of the preceding year, such board shall place the same on the roll of the current year at its valuation for the preceding year, to be fixed by the assessors in their petition, and shall tax the same at the rate per centum of the preceding year.

Third. That taxable property has been omitted from the assessment-roll, for the current year, such board shall place the same thereon at a valuation to be fixed by the assessors in their petition, and shall tax the same at the rate per centum of the current year.

A copy of the petition under the second or third subdivision of this section, with a notice of the presentation thereof to the board of supervisors, shall be served personally on the person alleged to be liable to taxation for the land omitted from the assessment-roll, at least ten days before the meeting of the board of supervisors; and the board of supervisors shall take no action on such petition, unless proof of the personal service of such petition and notice be made to them by affidavit. The board of supervisors shall give to the person alleged to be liable to taxation for such omitted land, an opportunity to be heard, and on such hearing and review the board of supervisors shall have, as to such omitted property all the powers of the assessors of a tax district in reviewing and correcting the assessment-roll. The whole amount of tax levied upon land or property omitted in the tax levy of the preceding year shall be deducted from the

aggregate of taxation to be levied on the tax district for the current year before such tax is levied.

§ 54. **Reassessment of property illegally assessed.**— Whenever by the final judgment of a court of competent jurisdiction, it appears to the board of supervisors that any property liable to taxation in any year was erroneously or illegally assessed, and that by reason of such erroneous or illegal assessment, such property did not become subject to taxation for such year, the board shall place the same on the roll of the current year at the valuation thereof, if any, fixed by the assessors for such preceding year; and in case no valuation was fixed by the assessors, such property shall be assessed by the board at such valuation as they may determine for the preceding year. Before fixing such valuation, the board of supervisors shall give to the owners of such property, at the time of the assessment by the board, a notice of at least five days and an opportunity to be heard, and on such hearing, the board shall have, as to such property, all the powers of the assessors of a tax district in reviewing and correcting an assessment-roll. Such property shall be taxed at the rate per centum of such preceding year. The whole amount of tax on property levied in pursuance of this section shall be deducted from the aggregate of taxation to be levied on the tax district for the current year, before such tax is levied.

§ 55. **Levy of tax by supervisors.**—The board of supervisors of each county shall, at its annual meeting, levy the taxes for the county, including the state tax, upon the valuations as equalized by it and estimate and set down in a separate column in the assessment-roll of each tax district therein, opposite to the sums set down as the valuation of real and personal property or property of incorporated companies or of the taxable rents reserved, the sum to be paid as a tax thereon, including the state tax, as fixed by the comptroller. Such assessment-roll shall, when the warrant is annexed thereto, become the tax-roll of the tax district, and a copy thereof shall be delivered to the proper supervisor, who shall deliver it to the clerk of the proper city or town to be kept by him for its use.

§ 56. **Tax-roll and collector's warrant.**— On or before December fifteenth, in each year, the board of supervisors shall annex to the tax-roll a warrant under the seal of the county, signed by the chairman and clerk of the board, commanding the collector of each tax district, to whom the same is directed, to collect from the several persons named in such roll the several sums mentioned in the last column thereof opposite their respective names, on or before the first day of the following February, and further commanding him to pay over on or before that date, all moneys so collected, appearing on said roll, to the treasurer of the county, if he be a collector of a city or a division thereof, or if he be a collector of a town:

1. To the commissioners of highways of the town, such sum as shall have been raised for the support of highways and bridges therein.

2. To the overseers of the poor of the town, such sum as shall have been levied, to be expended by such overseers for the support of the poor therein.

3. To the supervisor of the town, all of the moneys levied therein, to defray any other town expenses or charges.

4. To the treasurer of the county, the residue of the money so to be collected.

If the law shall direct the taxes levied for any local or special purpose in a city or town, to be paid to any person or officer other than those named in this section, the warrant shall be varied so as to conform to such direction. The warrant shall authorize the collector to levy such taxes by distress and sale, in case of nonpayment. The corrected assessment-roll, or a fair copy thereof, shall be delivered by the board of supervisors to the collector of the tax district on or before December fifteenth, in each year.

§ 57. **Statement of taxes upon certain corporations by clerk of supervisors.**— The clerk of each board of supervisors shall, within five days after the tax warrant is completed, deliver to the county treasurer, a statement showing the names, valuation of property and the amount of tax of every railroad corporation and telegraph, telephone and electric-light line in each tax dis-

trict in the county, and on refusal or neglect so to do, shall forfeit to the county the sum of one hundred dollars, to be sued for by the district attorney in the name of the county.

§ 58. **Statement of valuation to be forwarded to comptroller.**—The clerk of each board of supervisors shall, on or before the second Monday in December, transmit to the comptroller, in the form to be prescribed by such comptroller, a certificate or return of the aggregate assessed and equalized valuation of the real and personal estate in each tax district as the valuation of such real estate has been corrected by such board, and the amount of tax assessed thereon for town, city, school, county and state purposes. Also the names of the several incorporated companies liable to taxation in such county, the nature of their business, the amount of the capital stock paid in and secured to be paid in by each, the amount of real and personal property of each as put down by the assessors, or by it, the amount of taxes assessed on each, and the amount of personal property on which each such corporation is exempt on account of the payment of state taxes on its capital. In the city of New York such report shall be made by the clerk or the board of aldermen, and for the purpose of making such report he may require any department or board of such city to furnish the necessary information.

§ 59. **Abstract of warrant to be furnished county treasurer.**—On or before the twentieth day of December in each year, the clerk of the board of supervisors shall transmit to the treasurer of the county an abstract of the tax-rolls, stating the names of the collectors, the amount of money which each is to collect, the purpose for which it is to be collected, and the persons to whom and the time when it is to be paid. The county treasurer, on receiving such account, shall charge to each collector the amount to be collected by him.

ARTICLE IV.

Collection of Taxes.

Section 70. Notice by collector.
71. Collection of taxes.
72. Collection of taxes assessed against stock in banks and banking associations.
73. Payment of taxes by railroad and certain other corporations.
74. Enforcement of tax against telegraph, telephone and electric light lines.
75. Collection of taxes on rents reserved.
76. Collection of unpaid taxes on debts owing to non-residents of the United States.
77. Return of warrant for collection of taxes on debts owing to nonresidents; neglect to make return.
78. Remedy of tenant for taxes on part of lot.
79. Payment of taxes on part of lot.
80. Payment of taxes on state lands in forest preserve.
81. Fees of collector.
82. Return by collector of unpaid taxes.
83. Return when collection has been enjoined.
84. Payment of moneys collected.
85. Extension of time for collection.
86. Appointment of collector in case of vacancy
87. When sheriff shall execute collector's warrant.
88. Satisfaction of collector's bond.
89. Unpaid tax on resident real property to be reassessed.
90. Payment to creditors of the county.
91. Payment of state tax.
92. Accounts of county treasurer with comptroller.
93. Losses by default of collector or treasurer.
94. Article, how applicable.

§ 70. **Notice by collector.**— Every collector, upon receiving a tax roll and warrant, shall forthwith cause notice of the reception thereof to be posted in five conspicuous public places in the tax district, specifying one or more convenient places in such

tax district, where he will attend from nine o'clock in the forenoon until four o'clock in the afternoon, at least three days, and if in a city, at least five days, in each week for thirty days from the date of the notice, which shall be the date of the posting or first publication thereof, which days shall be specified in such notice, for the purpose of receiving the taxes assessed upon such roll. The collector shall attend accordingly, and any person may pay his taxes to such collector at the time and place so designated, or at any other time or place. In a city, the notice in addition to being posted shall be published once in each week, for two weeks successively, in a newspaper published in such city.

§ 71. Collection of taxes.—After the expiration of such period of thirty days, the collector shall call, at least once, on every person taxed upon such roll, whose taxes are unpaid, at his usual place of residence, if he is an actual inhabitant of such tax district, and demand payment of the taxes charged to him on his property. If any person shall neglect or refuse to pay any tax imposed on him, the collector shall levy upon any personal property in the county belonging to or in the possession of any person who ought to pay the tax, and cause the same to be sold at public auction for the payment of such tax, and the fees and expenses of collection; and no claim of property to be made thereto by any other person shall be available to prevent such sale. Public notice of the time and place of sale of the property to be sold shall be given by posting the same in at least three public places in the tax district where the sale is to be made, at least six days previous thereto. If the proceeds of such sale shall be more than the amount of such tax, the fees of the collection and the expenses of the sale, the surplus shall be paid to the person against whom the tax was assessed. If any other person shall claim the surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for the payment of whose tax the sale was made, such surplus shall be paid to such other person. If such claim be contested by the person for the payment of whose tax the property was sold, such surplus shall be paid over by the collector to the supervisor of the town, who shall retain the same until the rights of the parties thereto shall be determined by due

course of law, or by agreement in writing made by them and filed with the supervisor.

§ 72. **Collection of taxes assessed against stocks in banks and banking associations.**— Every bank or banking association shall retain any dividend until the delivery to the collector of the tax-roll and warrant of the current year, and within ten days after such delivery, shall pay to such collector so much of such dividend as may be necessary to pay any unpaid taxes assessed on the stock upon which such dividend is declared. In case the owner of such stock resides in a place other than where the bank or banking association is located, the same power may be exercised in collecting the tax so assessed as is given in case a person has removed from a tax district in which the assessment was made. The tax so assessed shall be and remain a lien on the shares of stock against which it is assessed till the payment of such tax, and if the stock is transferred it shall be subject to such lien. The collector or county treasurer may foreclose such lien in any court of record, and collect from the avails of the sale of the stock the tax assessed against the same. In addition thereto, the same remedy may be had for the collection of the tax on such shares as is now provided by law for enforcing payment of personal tax against residents.

§ 73. **Payment of taxes by railroad and certain other corporations.**— Any railroad, telegraph, telephone or electric-light company may, within thirty days after receipt of notice by the county treasurer from the clerk of the board of supervisors, pay its tax, with one per centum fees, to the county treasurer, who shall credit the same with such fees to the collector of the tax district, unless otherwise required by law. If not so paid the county treasurer shall notify the collector of the tax district where it is due, and he shall then proceed to collect under his warrant. Until such notice from the treasurer the collector shall not enforce payment of such taxes, but may receive the same, with the fees allowed by law, at any time.

§ 74. **Enforcement of tax against telegraph, telephone and electric-light lines.**— Collection of tax against a telegraph, telephone or electric-light line may be enforced by sale of the instruments and batteries connected with such line, and in case there

is not sufficient personal property, together with such instruments and batteries, to pay such tax and the percentage due the collector, he shall return a statement thereof to the county treasurer as other unpaid taxes are returned, and the county treasurer shall proceed to sell such part of the line in the tax district where the tax was levied as may be necessary to satisfy the unpaid taxes and percentage, in the manner now provided by law for the sale of lands on execution, and upon such sale shall execute to the purchaser a conveyance of such part of said line, and the purchaser shall thereupon become the owner thereof. Nothing herein contained shall be construed to prevent collection of such taxes by any procedure now provided by law.

§ 75. **Collection of taxes on rents reserved.**— If any tax upon any such tax-roll upon rents reserved is not paid, the collector shall collect the same by levy and sale of the personal property of the persons against whom the tax is levied, which may be found within the county. If no sufficient personal property belonging to such person can be found in the county, the collector shall collect such tax of the tenant or lessee in possession of the premises, on which the rent is reserved, in the same manner as if such tax had been assessed against such tenant or lessee. Every such tenant or lessee paying any such tax, or of whom any such tax shall be collected, shall be entitled to have the amount thereof, with interest, deducted from the amount of rent reserved upon such premises, which may be due or may thereafter become due thereon, or may maintain an action to recover the same.

§ 76. **Collection of unpaid taxes on debts owing to nonresidents of the United States.**— If it shall appear by the return of any collector that any tax imposed upon a debt owing to a person residing out of the United States remains unpaid, the county treasurer shall, after the expiration of twenty days from such return, issue his warrant to the sheriff of any county in this state where any debtor of any such nonresident creditor may reside, commanding him to make of the real and personal property of such nonresident the amount of such tax, to be specified in a schedule annexed to the warrant, with his fees and the sum of one dollar for the expense of issuing such warrant, and to return the warrant to the treasurer issuing the same, and to

pay over to him the money which shall be collected by virtue thereof, except the sheriff's fees, by a day therein to be specified within sixty days from the date thereof. The taxes upon several debts owing to a nonresident shall be included in one warrant. The taxes upon several debts owing to different nonresidents may be included in the same warrant, and the sheriff shall be directed to levy the sum specified in the schedule annexed, upon the real and personal property of the nonresidents, respectively, opposite to whose names, respectively, such sums shall be written, with fifty cents for the expenses of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the nonresidents against whom issued from the time an actual levy shall be made upon any property by virtue thereof, and the sheriff to whom the warrant shall be directed shall proceed upon the same, in all respects, with like effect, and in the same manner, as prescribed by law, in respect to execution against property issued upon judgment rendered in the supreme court, and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner.

§ 77. **Return of warrant for collection of taxes on debts owing to nonresidents; neglect to make return.**— If any sheriff shall neglect to return any such warrant as directed therein, or to pay over any money collected by him in pursuance thereof, he shall be proceeded against in the supreme court by attachment in the same manner, and with like effect, as for similar neglect in reference to an execution issued out of the supreme court in a similar action, and the proceedings therein shall be the same in all respects. If any such warrant shall be returned unsatisfied, wholly or partly, the county treasurer may obtain an order from a judge of the supreme court of the district, or a county judge of the county, of such treasurer, issuing the warrant, requiring such nonresident or any person having property of such nonresident or indebted to him, to appear and answer concerning the property of such nonresident. The same remedies and proceedings may be had in the name of such county treasurer or comptroller before the officer granting such order, and with a like effect, as are provided by law in proceedings against a judgment debtor

supplementary to execution against him, returned wholly or in part unsatisfied. The expenses of a county treasurer, and such compensation as the board of supervisors may allow him for his services under this section, and for making and transmitting to the assessors of the several towns of his county an abstract or copy of the statements of the agents of nonresident creditors, shall be a county charge.

§ 78. **Remedy of tenant for taxes paid by him.**— If a tax upon real property shall have been collected of any occupant or tenant, and any other person, by agreement or otherwise, ought to pay such tax, or any part thereof, such occupant or tenant shall be entitled to recover, by action, the amount which such person ought to have paid; or to retain the same from any rent due or accruing from him to such person for the land so taxed.

§ 79. **Payment of taxes on part of lot.**— The collector shall receive the tax on part of any lot, piece or parcel of land charged with taxes, provided the person paying such tax shall furnish such particular specification of such part, and in case the tax on the remainder thereof shall remain unpaid the collector shall enter such specification on his return to the county treasurer, clearly showing the part on which the tax remains unpaid, and if the part on which the tax shall be so paid shall be an undivided share, the person paying the same shall state to the collector who is the owner of such share, and the collector shall enter the name of such owner on his account of arrears of taxes, and such share shall be excepted in case of a sale for the tax on the remainder.

§ 80. **Payment of taxes on state lands in forest preserve.**— The treasurer of the state, upon the certificate of the comptroller as to the correct amount of such tax, shall pay the tax levied upon state lands in the forest preserve, by crediting to the treasurer of the county in which such lands may be situated, such taxes, upon the amount payable by such county treasurer to the state for state tax. No fees shall be allowed by the comptroller to the county treasurer for such portion of the state tax as is so paid.

§ 81. **Fees of collector.** — On all taxes paid within thirty days from the date of notice that he has received the roll, the collector shall be entitled to receive, if the aggregate amount shall not exceed two thousand dollars, two per centum, and otherwise one per centum, in addition thereto. On all taxes collected after the expiration of such period of thirty days, the collector shall be entitled to receive five per centum in addition thereto. The collector shall be entitled to receive from the county treasury two per centum as fees for all taxes returned to the county treasury as unpaid.

§ 82. **Return by collector of unpaid taxes.**— Every collector who makes and delivers to the county treasurer an account of unpaid taxes, upon the tax-roll annexed to his warrant, which he shall not have been able to collect, verified by his affidavit, that the sums mentioned therein remain unpaid, and that he has not, upon diligent inquiry been able to discover any personal property out of which the same could be collected by levy and sale, shall be credited by the county treasurer with the amount of such account. In making such return of unpaid taxes, the collector shall add thereto five per centum of the amount thereof. In case such tax is uncollected upon lands assessed to a resident he shall also state the reason why the same was not collected. Such return shall be indorsed upon or attached to said roll, and shall be in the form to be prescribed by the state board of tax commissioners. Such tax and percentage may be paid to the county treasurer at any time before a return is made to the comptroller.

§ 83. **Return when collection has been enjoined.**—Any stay, lawfully granted by any court of record by injunction or other order or proceeding, of the collection of any tax existing at the expiration of the period for the collection of the tax under any warrant or process in the hands of the collector or other officer for the collection thereof, or existing at the time of the expiration of the term of office of the collector or officer holding such warrant, shall operate as an extension of the time within which such collector or other officer may collect such tax until such stay is terminated and for the period of thirty days thereafter. As to

all other taxes to be collected under any such warrant or process, the collector or officer holding the warrant or process shall make a return thereof within the time prescribed by law.

§ 84. **Payment of money collected.**— Every collector shall, within one week after the time prescribed in his warrant for the payment of the moneys directed therein to be paid, pay to the officers and persons specified therein, the sums required in such warrant to be paid to them respectively. The officers and persons other than the county treasurer, to whom any such money shall be paid, shall deliver to the collector duplicate receipts therefor, one of which duplicates shall be filed by the collector with the county treasurer and shall entitle him to a credit in the books of the county treasurer for the amount therein stated to have been received, and no other evidence of such payment shall be received by the county treasurer. If any greater amount of taxes shall be levied in any town than the town charges thereof, and its proportionate share of the state taxes and county charges, the surplus shall be paid by the collector to the county treasurer, who shall place it to the credit of such town, and it shall go to the reduction of the tax upon the town for the succeeding year.

§ 85. **Extension of time for collection.**— The county treasurer, upon application of the supervisor of any town or common council of any city in his county, may extend the time for collection of taxes remaining unpaid to a day not later than May first, following, in case the collector shall pay over all moneys collected by him and make his return of nonresident taxes, and renew his bond in a penalty twice the amount of the taxes remaining uncollected, approved by the proper officers upon filing the same, as the original bond is required to be filed, and delivering a certified copy thereof to such treasurer. Receivers of taxes who have filed a bond as required by statute shall not be required to renew their bonds. This section shall not affect any special law relating to the extension of time for the collection of taxes, nor be construed to extend the time for the payment of the state tax by the county treasurer, as required by this chapter.

§ 86. **Appointment of collector in case of vacancy.**— If a person chosen to the office of collector of a town shall refuse to serve or be disabled from entering upon or completing the duties

of his office from any cause, the town board shall forthwith appoint a collector for the remainder of the year, who shall give the same undertaking, be subject to the same duties and penalties and have the same powers and compensation as the collector in whose place he was appointed. The supervisor of the town shall forthwith give notice of such appointment to the county treasurer. Such appointment shall not exonerate the former collector or his sureties from any liability incurred by him or them. If a warrant shall have been issued by the board of supervisors before the appointment of a collector to fill a vacancy or before the appointment of a collector under this section, the original warrant, if obtainable, shall be delivered to the collector so appointed and shall give him the same powers as if originally issued to him. If such warrant is not obtainable, a new one shall be issued by the chairman and clerk of the board of supervisors of the county, directed to the collector appointed, with the same force and effect as if originally issued to him. Upon any such appointment, the supervisor of the town or ward, if he shall deem it necessary, may extend the time limited for the collection of taxes, for a period not exceeding thirty days, and forthwith give notice of such extension to the county treasurer.

§ 87. **When sheriff shall execute collector's warrant.**— If the collector of any tax district in the State shall neglect or refuse to execute an official bond or undertaking as required by law, or the supervisor of the town shall refuse or neglect to approve and file the same, within the time prescribed by law, and a new collector shall not have been appointed within ten days after the time when such bond or undertaking should have been filed, the board of supervisors shall deliver the tax-roll or a copy thereof with the warrant annexed, to the sheriff, who shall give a like undertaking as is required from the collector, and who shall then proceed with the collection of the taxes levied therein in like manner as collectors are authorized by law to do, and with like powers and subject to the same duties and obligations. Every such warrant shall require all payments therein specified to be made by the sheriff within sixty days after the receipt of the warrant by him. The expense of the collection of such taxes by him, if any, over and above the fees lawfully chargeable by the collector,

shall be audited by the board of supervisors and shall be a charge upon the town.

§ 88. **Satisfaction of collector's bond.**— Upon the settlement of the account of taxes directed to be collected by a collector in any town or city, except in the city of New York, the county treasurer shall, if requested, and if the collector shall have fully paid over or duly accounted for all the taxes which he was required by law to collect, give to such collector or any of his sureties a written satisfaction of the collector's undertaking duly acknowledged and, upon the filing thereof in the office of the clerk of the county where the undertaking is recorded, the clerk shall enter satisfaction of such undertaking which shall thereby be discharged.

§ 89. **Unpaid taxes on resident real property to be reassessed.**— When the tax on any real property, not assessed as nonresident, is returned as unpaid and so remains, the county treasurer shall, during the month of July, furnish to a supervisor of the tax district in which such real property is located, a certified abstract of the tax-roll relating to such unpaid taxes, and such supervisor, before the delivery of the assessment-roll of such tax district to the collector, shall add a description of such real property to the assessment-roll of the then current year in the part thereof relating to nonresident lands, stating that it is a reassessment of such tax, and shall charge the same therewith. The amount of such tax shall bear interest at the rate of eight per centum per annum from the time it was returned to the county treasurer as unpaid until paid, or until the sale of such property to satisfy such tax by the county treasurer, or if the property is located in a county embracing a portion of the forest preserve, until the returns of such unpaid tax to the comptroller. Thereafter it shall be regarded for all purposes of assessment and collection, as a nonresident tax for the year in which such description is added. Such description shall conform to the direction of the state board of tax commissioners. If necessary, the county treasurer may cause proper surveys and maps to be made to enable such lands to be sold by description sufficient to convey title.

§ 90. **Payment to creditors of the county.**— Each county treasurer shall pay to the creditors of the county from the moneys paid to him by the collectors of taxes of the several towns therein, such sums and in such manner as the board of supervisors of the county direct.

§ 91. **Payment of state tax.**—The comptroller shall charge each county treasurer with the amount of the state tax levied on his county, crediting him with his fees, if any, but no fees shall be allowed by the comptroller for such portion of the state tax as is credited by him for unpaid nonresident taxes. The county treasurer of each county shall, after retaining his fees thereon, at the rate of one per centum thereof, which shall not, however, in any case exceed fifteen hundred dollars, pay the state tax to the treasurer of the state, as follows: One-third thereof on or before the fifteenth day of February, one-third thereof on or before the fifteenth day of April, and, unless otherwise provided by law, the balance thereof on or before the fifteenth day of May, in each year, and notify the comptroller of such payment. If there are not sufficient funds in the county treasury standing to the credit of any town to pay the state tax chargeable thereto, the treasurer shall borrow sufficient money upon the credit of the county and charge the same against such town with interest thereon until the same is paid. If any county treasurer shall not pay over the state tax as herein directed, the comptroller shall charge on all sums withheld such rate of interest as shall be sufficient to repay all expenditures incurred by the state in borrowing money equivalent to the amount so withheld, and such additional rate as he shall deem proper, not exceeding ten per centum, from the dates hereinbefore provided for such payments in each year, which shall be regarded as funds in the hands of the county treasurer belonging to the state and for which his sureties and county shall be liable.

§ 92. **Accounts of county treasurer with comptroller.**— The comptroller shall state annually on June first, the account of each county treasurer, and if any part of a state tax is unpaid at that date, the comptroller shall transmit by mail to the county treasurer a copy of such accounts and a requisition that he must pay the balance due the state within thirty days, and if the tax

is not paid within such time, the comptroller shall, unless he is satisfied by due proof that the treasurer has not received such balance, and has used due diligence in collecting the same, forthwith deliver a copy of the account to the attorney-general, who shall take the necessary proceedings to collect the same of the county treasurer or his sureties or otherwise, with interest as provided by the last preceding section. The comptroller may also, in his discretion, direct the board of supervisors of the county to institute the necessary proceedings on the undertaking of such county treasurer and his sureties. The comptroller shall also transmit to the board of supervisors on or before October tenth, a statement of account between his office and the county treasurer.

§ 93. **Losses by default of collector or treasurer.**— All losses sustained, and all deficiencies in any taxes, or in the payments to be made therefrom, by reason of the default of any collector, shall be chargeable to the town, or city of which he is collector. If occasioned by the default of the treasurer of any county in the discharge of his official duties, such losses shall be chargeable to such county. Any judgment against such treasurer for any such loss or deficiency on account of the state tax upon which an execution shall have been issued and returned unsatisfied shall be conclusive as to the fact of such loss or deficiency, and the amount of such deficiency shall thereupon become a charge against such county, and the board of supervisors thereof shall add all such losses or deficiencies to the next year's taxes of such town, city or county, and levy the same thereon.

§ 94. **Article, how applicable.**— This article shall apply to all the cities or towns of the state, in so far as the matters herein provided for do not conflict with the special and local laws of such cities or towns.

ARTICLE V.

Collection of Nonresident Taxes.

Section 100. Return of unpaid nonresident taxes.
101. Rejection of taxes.
102. Admission of nonresident taxes by comptroller and its effect.

Section 103. Payment to the county treasurer of excess of arrears credited.
104. Cancellation of tax by comptroller.
105. Transmittal of statement of cancelled taxes to board of supervisors.
106. Correction of imperfect descriptions.
107. Nonresident taxes, when and how paid the comptroller.
108. Reduction of overcharges.
109. Overpaid taxes.

§ 100. **Return of unpaid nonresident taxes.**— The collector shall return the original assessment-roll to the county treasurer and when the treasurer finds an account of unpaid nonresident taxes, or unpaid taxes on corporations, received from a collector to be a true transcript of such original assessment-roll to which the collector's warrant is attached, he shall add to it a certificate that he has examined and compared the account with such roll and found it to be correct, and after crediting the collector with the amount thereof, he shall, in case his county embraces a portion of the forest preserve, before the first day of April next ensuing, transmit such account, affidavit and certificate to the comptroller, who may before acting thereon return any such account to the county treasurer for correction, who shall make such correction and return to the comptroller in one month thereafter, or as the comptroller may otherwise direct.

§ 101. **Rejection of taxes.**— The comptroller shall examine every account of arrears of taxes on lands of nonresidents received from the county treasurer and reject all taxes entered therein, found to be erroneous, or charged on lands imperfectly described, and shall annually on or about September first, transmit to each county treasurer a transcript of the taxes of the preceding year in any tax district of his county, which shall have been rejected for any cause, with the grounds of such rejection.

§ 102. **Admission of nonresident taxes by comptroller and its effect.**— The comptroller shall admit all such taxes, properly assessed, and credit the county treasurer therewith, and such account, when accepted by him, shall be deemed conclusive

evidence of the regularity and validity of all taxes therein so admitted, and all prior proceedings in assessing the lands and levying and collecting such taxes, except when it shall be satisfactorily proven to the comptroller that any such tax was paid in the county, or that there was no legal right to levy the same, or that it arose from a double assessment, the tax levied on one of which has been paid.

§ 103. **Payment to the county treasurer of excess of arrears credited.**— If the arrears of taxes on lands of nonresidents credited to the treasurer of any county by the comptroller shall exceed the state tax in such county, the comptroller shall pay such excess, or the whole amount of such arrears, if there be no state tax, after deducting therefrom any balance due from the county, to the county treasurer, and the whole amount of such arrears and taxes shall thereafter belong to the state and be collected for its benefit.

§ 104. **Cancellation of tax by comptroller.**— The comptroller shall cancel any tax credited to a county upon the books in his office, which he shall discover after the transmission of the annual transcript of rejected taxes of such county to the county treasurer, to be erroneous, or charged on lands imperfectly described, and charge such taxes to the county in which such lands shall lie, with the interest thereon from March first, in the year following the levy of the taxes, to February first next after such cancellation. The comptroller shall cancel any tax returned as unpaid if it shall be made to appear to him that previously to such return it was paid to the collector or county treasurer, and if it shall also have been paid into the state treasury, he shall cause it to be repaid out of the treasury to the person by whom such payment shall have been made.

§ 105. **Transmittal of statement of canceled taxes to board of supervisors.**— The comptroller shall transmit a transcript of the returns of all taxes canceled, with the addition of interest thereon, to the county treasurer, who shall deliver a copy thereof to a supervisor of the tax district in which such taxes were assessed, by whom it shall be returned to the board of supervisors at their next annual meeting. If such tax district shall have been divided since the assessment, the county treasurer shall

deliver such transcript to the board of supervisors at their next annual meeting. If any such cancellation was by reason of the tax having been paid before the same was returned by the county treasurer, such treasurer, shall present the transcript to the board of supervisors of the county, and the amount of such tax, with the interest, shall be collected by such board of the collector or the county treasurer who made the erroneous returns, and shall be paid into the state treasury.

§ 106. **Correction of imperfect descriptions.***- The supervisor of the tax district in which any lands are situated, upon which a tax shall have been rejected by the comptroller, or shall have been canceled and charged to the county to which it had previously been credited, shall add to the assessment-roll of the tax district in which the land is situated for the year during which a transcript of the returns of such taxes shall have been forwarded by the comptroller to the county treasurer, an accurate description of such lands, if he can obtain the same, the correct amount of taxes thereon, the tax of each year and each kind of tax separately, and shall furnish the comptroller with all such maps and surveys of such lands as shall be required by him. Such supervisor may, if necessary, cause a survey and map of each lot or parcel returned for more perfect description to be made, and the expense of such survey and map shall be a town charge. The board of supervisors shall direct the collection of such taxes so added to such assessment-roll, and they shall be considered the taxes of the year in which the description shall be perfected. If any such supervisor shall not fully comply with the provisions of this section the comptroller shall not thereafter admit, but shall reject, all such reassessed, canceled or rejected taxes as may be returned to him. If such taxes are not levied upon such lands as herein required, the board of supervisors shall cause the same, with interest thereon, to be levied upon the tax district in which originally assessed, and collected with the other taxes of the same year. If the tax district shall have been divided since such assessment, such taxes and interest shall be apportioned by the board of supervisors among the tax districts included in the limits of such original tax districts in such equitable manner as it may deem proper.

* Compare with L. 1855, ch. 427, § 19, post.

§ 107. Nonresident taxes, when and how paid to comptroller. — The comptroller shall, at any time after August first, next after receiving statement thereof from the county treasurer, furnish any person desiring to pay the taxes on any parcel of land, a certificate of the amount of such taxes, interest and charges, and the State treasurer may receive payment therefor upon such certificate, which shall be countersigned by the comptroller and entered in the books of his office. Such interest shall begin August first, of such year, and be at the rate of ten per centum per annum. Any person claiming a divided or undivided part in any parcel may pay to the State treasurer any part of the amount due thereon, proportionate to the share or interest claimed by him, on the certificate of the comptroller. The remaining tax and charges shall be a lien on the residue of the land or interest only. If the land has been subdivided since the assessment, the comptroller may require a map of the subdivisions. Any person may pay the tax for any one year on any tract or lot of land without paying the tax of any other year.

§ 108. Deduction of overcharges.— If any tract or lot of land shall have been returned as containing a greater quantity of land than it actually contained, the amount overcharged shall be deducted. If the tax shall have been paid according to such return, the overcharge shall be refunded out of the treasury upon the production to the comptroller of satisfactory proof of the quantity actually contained in each tract or lot at the time of the assessment. No such overcharge shall be cancelled nor such over-payments refunded, unless application shall be made to the comptroller before the sale of such lands, and within six years after the assessment. If the whole amount of the tax shall have been paid to the county treasurer out of the state treasury, the comptroller shall charge the amount so refunded with interest and charges thereon to the treasurer of the county to which the tax was returned, and shall transmit an account thereof to him. The county treasurer shall deliver such account to the board of supervisors at their next annual meeting, which shall cause the amount thereof to be added to the taxes of the tax district in which the tax was assessed, and when collected it shall be paid into the treasury of the county.

§ 109. Overpaid taxes.— If it shall satisfactorily appear to the comptroller that the amount of any tax has been paid, and afterwards other money has been paid into the state treasury on account of such tax or that the amount of any tax has been overpaid to the treasurer of the state, he may draw his warrant on the treasury for the amount paid in excess of the tax due, in favor of the person paying the same.

ARTICLE VI.

Sale by Comptroller for Unpaid Taxes and Redemption of Lands.

Section 120. Notice of sale.
121. Maps to be furnished comptroller.
122. Sale, how conducted.
123. Purchases by comptroller, for state or county.
124. Withdrawal from sale of lands upon which the state has a lien.
125. Payment of bids and certificate of purchase.
126. New certificate upon setting aside sale.
127. Redemption of lands.
128. Redemption of lands conjointly assessed.
129. Prohibition of the despoliation of lands sold.
130. Notice of unredeemed lands.
131. Comptroller's deed.
132. Effect of former deeds.
133. Possession of lands by the state.
134. Notice to occupants.
135. Certificate of nonredemption and completion of title.
136. Redemption by occupant and certificate of redemption.
137. Redemption by occupant before notice and effect of failure to redeem.
138. Lien of mortgage not affected by tax sale.
139. Redemption by mortgagee before notice.
140. Cancellation of sales.
141. Setting aside cancellation of sale.
142. Expenses of sale.
143. Payment of moneys into state treasury.

§ 120. **Notice of sale.**—The comptroller may sell any lands heretofore or hereafter returned to him for nonpayment of any tax thereon, if such tax and the interest thereon, or any part thereof shall remain unpaid for one year after February first, following the year in which the tax was levied. He shall make out a list of all such lands in any county and transmit to the county treasurer thereof at least eighteen weeks before the commencement of the sale, a number of copies of such list sufficient to furnish five copies to the county treasurer, two copies to the county clerk and two copies to the clerk of each town and city in which such lands are situated. The county treasurer shall transmit the same to such officers. The comptroller shall publish such list with a notice, that on a day to be specified therein and the succeeding days, so much of such lands as may be necessary to discharge the taxes, interest and charges due thereon at the time of sale, will be sold at public auction at the capitol in the city of Albany. Such list shall be inserted in two newspapers published in such county, once in each week for twelve successive weeks prior to the commencement of the sale, and in the body of the newspapers and not in a supplement. If there are not two newspapers published in the county, the publication shall be in two newspapers which the comptroller shall determine to be most generally circulated in the county. Due proof of the publication of such list and notice in each newspaper shall be made and filed in the office of the comptroller within twenty days after the last publication. The expense of printing, publishing and transmitting such list shall be audited by the comptroller and paid out of the state treasury. No error in the description of the lands in any list published in any newspaper shall render any sale void or in any manner affect its validity.

§ 121. **Maps to be furnished comptroller.**—The comptroller may apply to the supervisor of any town for maps of any tract of land returned from such town for nonpayment of taxes, if he deem it necessary in order to test the correctness of the description thereof, preparatory to a sale of such lands, and the supervisor shall furnish such maps at the expense of the town, if they

can be procured; if not, he shall furnish such descriptions of the lands as he can obtain, with a statement of the quantity in each subdivision, if the same is divided. The treasurer of every county shall, on receiving a list of lands to be sold at a state sale transmit to the comptroller at least one month before any state tax sale, a certified list of all lands bid in at any tax sale, in the name of such county, or transferred to such county upon any such sale, or to which the county may have acquired a tax title, the deed for which has not been recorded in the office of the clerk of the county, which may then be liable to be sold at such sale. Every county clerk shall, on receipt of a list of the lands therein liable to be sold at any state tax sale, and at least one month before the sale, transmit to the comptroller a certified list of all lands the conveyances of which are on record in his office, then owned by such county, and liable to be sold at such sale.

§ 122. **Sale, how conducted.**— On the day mentioned in the notice of sale the comptroller shall commence the sale of the lands specified in the lists annexed to the notice, and continue the sale from day to day, until so much of each parcel shall be sold as will be sufficient to pay all the taxes thereon for the years for the taxes of which such sale shall be made, with the interest and charges thereon. In case no purchaser bids the amount due on any lot or parcel, the comptroller is authorized to bid in such lot or parcel for the state. The comptroller may, in his discretion, decline to receive any bid on any parcel of land, if in his opinion, it is made by or for any person not acting in good faith, and any such land shall be sold at such sale the same as if such bid had not been made thereon. And in case the land is located in a county outside the forest preserve, the comptroller may sell and assign the certificate therefor at any time before the expiration of the period for redemption, on such terms as to him shall seem for the best interests of the state.

§ 123. **Purchases by the comptroller for state or county.**— The comptroller shall bid in for the state all lands of the state liable to be sold at any tax sale held by him, or lands that are then mortgaged to the commissioners for loaning certain moneys of the United States, and for each county, all lands belonging to

such county liable to be sold at such sale, and also all lands which may have been bid in by or for such county at any tax sale which has not been cancelled or from which said lands have not been duly redeemed; and to reject any and all bids made for any of such lands. The comptroller shall make certificates of sales for all lands so bid in by him, describing the lands purchased and specifying the time when a deed therefor can be obtained. Such purchases shall be subject to the same right of redemption as purchases by individuals; and if the land so sold shall not be redeemed, the comptroller's deed therefor shall have the same effect and become absolute in the same time, and on the performance of the like conditions, as in the case of sales and conveyances to individuals. The comptroller shall charge to each county, on the books of his office, the amount for which it may be liable, by reason of any purchase made in accordance with this section, and such amount shall become due on the last day of each tax sale and shall be payable in the same manner as the state tax is required by law to be paid. The comptroller shall, as soon as practicable, after each tax sale, transmit the certificates of sale for such lands to the treasurer of each of such counties, on receipt of which the county treasurer shall enter the same, in their proper order, in a book to be kept by him for such purpose, and unless otherwise directed by the board of supervisors of his county, shall have full power and authority, until the expiration of one year from the last day of such sale, to sell and assign any of such certificates for any land not at the time owned by his county, on payment therefor, into the county treasury, of the amount for which the land described therein was sold at such tax sale, with interest thereon, from the date of such tax sale to the date of such sale and assignment by him. All such sales and assignments shall be duly and fully entered by such county treasurer in such book, which book shall be a part of the records of the county. If any such tax sale certificate shall not have been sold or assigned by the respective county treasurers on or before the expiration of one year from the last day of such sale, each of such county treasurers shall then transmit such unsold

certificate or certificates to the comptroller, who shall issue to the board of supervisors of each county, respectively, a deed or deeds for all of the lands described thereon then remaining unredeemed, or the sale for which has not been cancelled. The title thus acquired by the boards of supervisors shall be held by them in trust for their respective counties, and may be disposed of by them at such times and on such terms as shall be determined by a majority of such board at any regular or special meeting thereof.

§ 124. **Withdrawal from sale of lands upon which the state has a lien.** — No land against which the people of the state of New York hold a bond or lien for any part of the purchase price thereof shall be sold, but all such land shall be withdrawn from such sale. The amount of taxes, interest and expenses for which it may be liable to sale as shown by the comptroller's book of sales shall be charged against each lot, piece or parcel of such land in the books in the comptroller's office in which the accounts of school funds and other bonded lands are kept, and the state treasurer shall, on the receipt of a statement of such amounts, charge the same against the respective lots, pieces or parcels of land, on which they are due, on the duplicate bond-books kept in his office. The holder of the certificate or contract of purchase of any such land, may discharge the same from liability in consequence of such charge, by paying to the state treasurer at any time within two years after the last day of sale from which such lands were withdrawn, the amount of such charges with interest thereon at the rate of ten per centum annually. If such payment is not made, the comptroller shall, at the expiration of such two years, state an account of the indebtedness against each lot, piece or parcel of such land, with the addition of thirty-seven and one-half per centum thereto, and the amount of principal and interest due on the bond or lien thereon, to the commissioners of the land office, who may thereupon, if default shall be made in the payment of such bond, direct the comptroller to put the same in suit, or shall direct the state engineer and surveyor to again sell the lands against which such indebtedness remains. Upon any sale thereof, all previous payments made on account

of such land shall be forfeited to the people of the state. No conveyance of any such lands shall be made to any purchaser, until all such taxes and expenses charged against the same on such bond-book are paid into the state treasury.

§ 125. **Payment of bids and certificate of purchase.**— Every purchaser at any sale of lands by the comptroller under this article shall pay the amount of his bid to the state treasurer within forty-eight hours after the last day of sale. Upon the payment of a bid to the comptroller he shall give to the purchaser a written certificate, describing the lands purchased, the sum paid and the time when the purchaser will be entitled to a deed.

§ 126. **New certificate upon setting aside sale.**— If a purchaser shall not have paid his bid, or the same shall not have been collected from him at the expiration of one month from the conclusion of the sale, at which the bid was made, the comptroller may set aside the sale of land for which the bid was made, and all the rights of the purchaser under such bid shall thereby be extinguished, and the comptroller shall issue a certificate of such sale if the land be in a county including a portion of the forest preserve, to the people of the state. If said land be in a county not including any portion of the forest preserve, such certificate shall be issued to any person who will pay the same amount as would be payable by the original purchaser in case the sale had not been set aside. If such certificate shall not have been sold within three months from the date of such sale he shall transfer the same to the people of the state. If the transfer be to the people, the whole quantity of land liable to sale for the purchase-money mentioned in the certificate shall be covered by such purchase, the same as if no person had offered to bid therefor at the sale. The change of purchaser made pursuant to this section and the time when made shall be noted in the sales book, and the certificate issued shall confer the same right upon the state as it would have acquired had the land been bid in for it at the sale.

§ 127. **Redemption of lands.**— The owner or occupant of any lands sold by the comptroller for taxes, or any other person

having an interest therein at the time of the sale, may redeem the same from such sale at any time within one year after the last day of the sale, by paying to the state treasurer, on the certificate of the comptroller for the use of the purchaser, his heirs or assigns, the sum mentioned in the certificate of sale therefor, with interest thereon at the rate of ten per centum per annum, after the date of such certificate of sale. The purchaser of any wild, vacant or unoccupied land at any such sale, or his assigns, shall not enter upon or exercise acts of ownership on such land, until the expiration of one year allowed for the redemption thereof from such sale. A person having an interest in an undivided part of any tract, lot or piece of land so sold, or in an undivided share in any tract or lot of land out of which an undivided part shall have been sold, may redeem such undivided part or share by paying such proportion of the purchase-money and interest as shall be in proportion to the part or share of the lands sold which he shall claim. Every person having an interest in a specific part of any tract, lot or piece of land, so sold, or lot of land out of which an undivided part may have been sold for taxes charged on the whole tract or lot, may redeem such specific part by paying such proportion of the purchase money and interest as his quantity of acres shall bear to the whole quantity of acres sold, or to the whole quantity taxed. Any person claiming a specific part of any tract or lot of land, out of which a specific part belonging to some other person shall have been sold for taxes charged on the whole tract or lot, may exonerate himself from all liability to contribute to the owner of the part sold, by paying to the comptroller at any time before the expiration of the time allowed for the redemption thereof, such proportion of the purchase-money and interest as his quantity of acres shall bear to the whole quantity taxed, and such payment shall operate as a redemption of his proportionate part of the lands sold according to the amount paid. Upon a partial redemption under this section, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption and the comptroller shall convey accordingly.

§ 128. **Redemption of lands conjointly assessed.**— If the lands

of one person shall be sold for taxes assessed conjointly on his lands and lands of another, and the latter shall not pay his due proportion required for the redemption of his lands, the former may redeem the same on paying to the comptroller the purchase-money and interest, and he shall be entitled to recover, after the expiration of the time allowed for redemption, from the other person whose lands were assessed with his, a just proportion of the redemption moneys paid, with interest. If the lands of one person so sold for taxes assessed conjointly on his lands and the lands of another person, shall not be redeemed, and they shall be conveyed by the comptroller, the former may recover from the latter the same proportion of the value of the lands sold and conveyed, that the latter ought to have paid of the tax and interest and charges for which the land shall have been sold. Every judgment obtained under this section shall have priority as against the lands of the defendant therein, on which the tax was assessed, and for which such proportionate part ought to have been paid, over all mortgages and judgments, if at the time of docketing such judgment the plaintiff cause an entry to be made by the clerk in the docket thereof, specifying that such judgment has priority as a lien on certain lands, over mortgages and other judgments, pursuant to the tax law, which entry shall be a part of such docket. In all actions under this section, the certificate of the state treasurer, countersigned by the comptroller, stating the facts in relation to such redemption, or sale and conveyance, shall be presumptive evidence of all facts therein stated.

§ 129. **Prohibition of the despoliation of lands sold.**— Neither the owner, occupant nor any other person shall have the right to despoil any lands sold for taxes by the comptroller of their value, by the removal of buildings or by cutting, removing or destroying timber, or other valuable products, growing, existing or being thereon at the time of sale. The purchaser of any wild, vacant, or unoccupied land at the sale thereof by the comptroller, whose bid therefor shall have been fully paid, or his assigns or representatives may at any time before obtaining his deed, cause to be served a notice on any person despoiling such lands or inter-

ested in such despoliation, either personally or by leaving the same at the residence of such person, or with any member of his family of suitable age and discretion. The notice shall describe such lands, substantially as sold, shall state that it was sold for taxes by the comptroller, and that an action to recover the value of the buildings, timber or other products destroyed or removed therefrom, after the date of sale thereof, will be instituted against all persons concerned in such despoliation. If such lands shall not be redeemed, every person engaged or interested in making such despoliation, upon whom service of the notice shall have been made, shall be liable to pay to the holder of the tax sale certificate therefor the full value of any building so destroyed or removed therefrom, and of all the timber, bark, or other products so cut or destroyed or removed therefrom, from the date of the sale of such land to the termination of such action, and may be restrained by injunction from committing any waste thereon,

§ 130. **Notice of unredeemed lands.**— The comptroller shall, at least three months before the expiration of the one year allowed for the redemption of lands sold by him for taxes, cause a notice to be published once in each week for at least six weeks successively, the last publication to be at least six weeks before expiration of the year, in the newspapers designated by the board of supervisors of the county in which such lands are situated, to publish the session laws, containing a list of the lands in such county sold for taxes and unredeemed, specifying particularly every parcel unredeemed, and the amount necessary to redeem the same, calculated to the last day in which such redemption can be made, and stating that, unless such lands are redeemed by a certain day, they will be conveyed to the purchaser. If more than two newspapers in any county are designated in pursuance of law to publish the session laws, such publication shall be made in two of the newspapers so designated to be selected by the comptroller, representing different political parties. If no newspaper shall have been so designated in any county such publication shall be made in two newspapers in the county, to be selected by the comptroller, and if there shall not

be two newspapers published in the county, then in two newspapers which the comptroller shall determine to be most generally circulated in such county, representing each of the political parties casting the largest number of votes therein at the general election next preceding such designation. The expense of such publication shall be audited and paid by the board of supervisors of the county in which such lands are situated.

§ 131. **Comptroller's deed.**—After the expiration of one year from the time of sale, the comptroller shall execute in the name of the people of the state, to the purchaser thereat, his heirs or assigns, a conveyance of any lands so sold by him for taxes and not redeemed, under his hand and official seal, and witnessed by the deputy comptroller, or state treasurer, which shall vest in the grantee an absolute estate in fee simple, subject to all claims which the state may have thereon for taxes or other liens or incumbrances, and which shall be presumptive evidence that the sale and all proceedings prior thereto, from and including the assessment of the lands sold, and that all notices required by law to be given previous to the expiration of the time allowed by law for the redemption thereof, were regular and in accordance with all the provisions of law relating thereto. After two years from the date of such conveyance such presumption shall be conclusive. The comptroller may receive evidence of the loss or wrongful detention of any certificate, and on satisfactory proof of the fact may execute and deliver a deed to such person as may appear to be the rightful owner of such certificate.

§ 132. **Effect of former deeds.**— Every such conveyance heretofore executed by the comptroller, county treasurer or county judge and all conveyances of the same lands by his grantee or grantees therein named, which have for two years been recorded in the office of the clerk of the county in which the lands conveyed thereby are located, and all outstanding certificates of a tax sale heretofore held by the comptroller, that shall have remained in force for two years after the last day allowed by law for redemption from such sale, shall be conclusive evidence that the sale and proceedings prior thereto, from and including the assessment of the lands, and all notices required by law to be

given previous to the expiration of the time allowed for redemption, were regular and were regularly given, published and served according to the provisions of all laws directing and requiring the same or in any manner relating thereto, but all such conveyances and certificates, and the taxes and tax sales on which they are based, shall be subject to cancellation, by reason of the payment of such taxes, or by reason of the levying of such taxes by a town or ward having no legal right to assess the land on which they are laid, or by reason of any defect in the proceedings affecting the jurisdiction upon constitutional grounds, on direct application to the comptroller, or in an action brought before a competent court therefor; provided, however, that such application shall be made, or such action brought, in the case of all sales held prior to the year eighteen hundred and ninety-five, within one year from the passage of this act; and in the case of the sale of eighteen hundred and ninety-five and of all sales hereafter held, that such application shall be made, or such action brought, within five years from the expiration of the period allowed by law for the redemption of lands sold at the particular sale sought to be cancelled.

§ 133. **Possession of lands by the state.**— The comptroller may advertise once a week, for at least three weeks successively, a list of the wild, vacant and forest lands to which the state holds title, from a tax sale or otherwise, in one or more newspapers to be selected by him, published in the county in which the lands are situated, and from and after the expiration of such time, all such wild, vacant and forest lands are hereby declared to be and shall be deemed to be in the actual possession of the comptroller, and such possession shall be deemed to continue until he has been dispossessed by the judgment of a court of competent jurisdiction.

§ 134. **Notice to occupants.**— If any lot or separate tract of land sold for taxes by the comptroller and conveyed, or any part thereof shall, at the time of the expiration of one year given for the redemption thereof, be in the actual occupancy of any person, the grantee to whom the same shall have been conveyed, or the person claiming under him shall within one year from the expiration of the time to redeem, serve a written notice

on the person occupying such land, either personally or by leaving the same at the dwelling-house of the occupant, with a person of suitable age and discretion belonging to his family. The term "occupant" shall be construed to mean a person who has lawfully entered upon the land so occupied, and is in possession of the same to the exclusion of every other person. And the term "occupancy" shall mean the actual lawful and exclusive use and possession of such lands and premises by such an occupant. The notice shall state in substance, the sale and conveyance of the land, the person to whom made, the amount of consideration money mentioned in the conveyance, with the addition of thirty-seven and one-half per centum thereon, and of the sum paid for the deed, and that unless such consideration money and percentage with the sum paid for the deed, shall be paid into the state treasury for the benefit of the grantee, within six months after the time of filing in the comptroller's office of the evidence of the service of such notice, the conveyance shall become absolute and the occupant and all others interested in the land be forever barred from all right or title thereto. No conveyance made in pursuance of this section shall be recorded until the expiration of the time mentioned in such notice, and the evidence of the service of such notice shall be recorded with such conveyance.

§ 135. **Certificate of nonredemption and completion of title.** —Within one month after the service of any such notice, the grantee or person claiming under him, in order to complete his title to the land conveyed shall file with the comptroller a copy of the notice served, with the affidavit of a person, certified as credible by the officer before whom the affidavit is taken, that the notice was duly served specifying the mode of service. If the comptroller shall be satisfied that the proper notice has been duly served, and if the moneys required for the redemption of such land shall not have been paid within the six months, he shall under his hand and official seal, certify such facts, and the conveyance before made shall thereupon become absolute and the occupant and all others interested in such lands shall be forever barred from all right and title thereto.

§ 136. **Redemption by occupant and certificate of redemption.**— The occupant, or any other person having an interest therein at the time of the sale, may at any time within the six months mentioned in such notice redeem such land by paying into the treasury the consideration money with the addition of thirty-seven and one-half per centum thereon and the amount paid for the deed. Every such redemption shall be as effectual as if made before the expiration of the year allowed for the redemption of the land sold. In all cases of application for redemptions on the ground of occupancy, in which a part only of the separate lot or tract of land thus sold is occupied, the applicant shall be allowed to redeem only that particular part of the lot or tract sold which shall be actually occupied, used and possessed as herein defined, at the time of the expiration of the one year given for the redemption thereof; provided, that the notice required to be served upon such occupant by the purchaser at a tax sale, his grantee or person claiming under him, shall, in addition to other facts now required to be stated therein, contain a specific description of the particular part of the lot or tract sold which may be redeemed and the amount necessary to redeem the same. Such partial redemption may be allowed upon filing in the office of the comptroller, satisfactory evidence of such occupancy, and of the extent thereof, and by paying such proportion of the consideration money mentioned in the conveyance, with the addition of thirty-seven and one-half per centum of such amount and the further addition of the sum paid for the deeds, as the value of the lands and the premises occupied and sought to be redeemed bears to the value of the whole quantity of land sold; such value to be determined and fixed by the comptroller.

§ 137. **Redemption by occupant before notice and effect of failure to redeem.**— The occupant of any lot or separate tract of land sold for taxes by the comptroller, or any part thereof, or any person who had the title thereto or an interest therein at time of the sale may, at any time before the service of such notice by the purchaser or the person claiming under him and within two years from the expiration of the year allowed by law for the

redemption thereof and not thereafter, redeem any land so occupied, by filing in the office of the comptroller, satisfactory evidence of the occupancy required, and by paying to him the consideration money for which the lands to be redeemed were sold and thirty-seven and one-half per centum thereon, with the sum paid for the deed, if any. On application for such redemption the comptroller may appoint a commissioner to take all material evidence offered with reference to the occupation of the lands in question. The hearing shall be had in the county where the land is situated, on at least ten days' notice to the party applying for the redemption. The commissioner shall have the same power to issue subpoenas and proceed with the examination of witnesses under oath, as is had by a referee in a court of record. His compensation shall not exceed six dollars per day and shall be taxed by the comptroller and paid upon his warrant by the treasurer. He shall report the testimony taken by him with his opinion thereon, to the comptroller for his decision. Such occupant or other person shall also pay to the comptroller such amounts as may have been paid to the state for subsequent taxes thereon, or for redemption from subsequent tax sales thereof, and if such lot has been legally exempt from taxation for one or more years subsequent to the sale, a sum equal to the gross amount of taxes and interest which would have been due thereon, if it had been taxed during each of the years it was so exempt, on its assessed valuation, and at the rate per centum of taxation thereon for the year when last returned to the comptroller's office. In case of failure to redeem within the time herein specified, the sale and conveyance thereof shall become absolute and the occupant and all other persons barred forever.

§ 138. **Lien of mortgage not affected by tax sale.**— The lien of a mortgage, duly recorded or registered at the time of the sale of any lands for nonpayment of any tax or assessment thereon, shall not be destroyed, or in any manner affected, except as provided in this section. The purchaser at any such sale shall give to the mortgagee a written notice of such sale within one year from the expiration of the time to redeem, requiring him to pay the amount of purchase-money, with interest, within six months after giving the notice. Such notice may be given either person-

ally or in the manner required by law in respect to notices of nonacceptance or nonpayment of notes or bills of exchange, and a notarial certificate thereof shall be presumptive evidence of the fact that may be recorded in the county in which the mortgage was recorded, in the same manner and with the same effect as a deed or other evidence of title to real property.

§ 139. **Redemption by mortgagee before notice.**— The holder of any mortgage which is duly recorded at the time of the sale, may, at any time after the sale of all or any part of the mortgaged premises for unpaid taxes, and before the expiration of six months from the giving of the notice required by this article to be given to a mortgagee, redeem the premises so sold or any part thereof from such sale. The redemption shall be made by filing with the comptroller a written description of his mortgage and by paying to the state treasurer, upon the certificate of the comptroller, for the use of the purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest at the rate allowed by law in case of redemption by occupants from the date of such certificate. The holder of such mortgage shall have a lien upon the premises redeemed for the amount so paid with interest from the time of payment, in like manner as if it had been included in the mortgage.

§ 140. **Cancellation of sales.**— The comptroller shall not convey any lands sold for taxes if he shall discover before the conveyance, that the sale was for any cause invalid or ineffectual to give title to the lands sold; but he shall cancel the sale and forthwith cause the purchase-money and interest thereon to be refunded out of the state treasury to the purchaser, his representatives or assigns. If the error originated with the county or town officers the sum paid shall be a charge against the county from which the tax was returned, and the board of supervisors thereof shall cause the same to be assessed, levied and collected and paid into the state treasury. If he shall not discover that the sale was invalid until after a conveyance of the lands sold shall have been executed he shall, on application of any person having any interest therein at the time of the sale, on receiving proof thereof, cancel the sale, refund out of the state

treasury to the purchaser, his representatives or assigns, the purchase-money and interest thereon, and recharge the county from which the tax was returned, with the amount of purchase-money and interest from the time of sale, which the county shall cause to be levied and paid into the state treasury. On any such application the comptroller may appoint a commissioner with like powers and duties as in case of an application for redemption; provided, however, that in any county which does not include a portion of the forest preserve, such application for cancellation may also be made by the owner of the lands at the time of the tax sale.

§ 141. **Setting aside cancellation of sale.**— The comptroller shall have power to set aside any cancellation of sale made by him in either of the following cases:

First. When such cancellation was procured by fraud or misrepresentation.

Second. When it was procured by the suppression of any material fact bearing on the case.

Third. When it was made under a mistake of fact.

The comptroller shall in all cases specify the grounds upon which such cancellation is set aside.

§ 142. **Expenses of sale.**— The expenses attending any sale for taxes under this article, including the expenses of printing and publishing lists and notices and transmitting copies thereof, and of all other things required to be done before the sale shall be had, shall be a charge on the lands liable to be sold; and the comptroller shall add to the taxes, interest and other charges on each parcel of land liable to be sold, an equal proportionate part of such expenses to be estimated by him.

§ 143. **Payment of moneys into state treasury.**— The moneys received upon any sale and interest under this article, and for the expenses of the sale shall be paid into the state treasury and the accounts of all persons entitled to any portion of the moneys so received for such expenses, shall be audited by the comptroller and paid out of the state treasury.

ARTICLE VII.

Sales by County Treasurers for Unpaid Taxes and Redemption of Lands.

Section 150. When lands to be sold for unpaid taxes.
151. Advertisement and sale.
152. Redemption.
153. Conveyance by county treasurer.
154. Conveyance and its effect.
155. When purchase money to be refunded.
156. Lands which the state owns or upon which it has a lien.
157. Provisions relative to comptroller to apply to treasurer.
158. Article not to relate to certain cities.

§ 150. **When lands to be sold for unpaid taxes.**†—Whenever any tax charged on nonresident real estate, not in a county including a portion of the forest preserve, is returned to the county treasurer, he shall not return the same to the comptroller, but if such tax, with interest thereon at the rate of ten per centum per annum, computed from the first day of February, after the same is levied, shall remain unpaid for six months from that date, such county treasurer shall advertise and sell such real estate as herein provided for the payment of such tax and interest and the expense of such sale. The expense of publication of the notice of sale and the list of lands to be sold and the expense of conducting the sale shall be a charge on the land liable to be sold and shall be added to the tax and interest.

§ 151. **Advertisement and sale.**—The county treasurer shall immediately after the expiration of such six months cause to be published at least once in each week for six weeks, in the two newspapers designated for the publication of the session laws, a list of real estate so liable to be sold, together with a notice that such real estate will, on a day at the expriration* of said six weeks specified in such notice, and the succeeding days, be sold at public auction at the court house in the county where the same is situated, to discharge the taxes, interest and expenses that

* So in the original. † Compare with L. 1893, ch. 711, § 30, post 3956.

may be due thereon at the time of such sale. On the day mentioned in such notice the county treasurer shall begin the sale of said real estate and continue the same from day to day. The charge for publishing such notice shall be seventy-five cents per folio for the first insertion, and fifty cents per folio for each subsequent insertion. The counties of the state other than those in the forest preserve are empowered to acquire and hold such lands, and after the time for redemption has expired, the county treasurer is authorized in the name of the board of supervisors of the county to sell and convey under his hand and seal such lands in the manner and upon such terms as the board of supervisors of the county may direct.

§ 152. **Redemption.**— The owner, occupant or any other person having an interest in any real estate sold for taxes as aforesaid, may redeem the same at any time within one year after the last day of such sale, by paying to the county treasurer of the county, for the use of the purchaser, the sum mentioned in his certificate, together with interest thereon at the rate of ten per centum per annum, to be computed from the date of such certificate, and any tax which the holder of said certificate shall have paid between the days of sale and redemption:

§ 153. **Conveyance by county treasurer.**— If such real estate, or any portion thereof, be not redeemed as herein provided, the county treasurer shall execute to the purchaser a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee, subject, however, to all claims the county or state may have thereon for taxes or other liens or incumbrances. The county treasurer shall receive from the purchaser fifty cents for preparing such conveyance, and ten cents additional for each piece or parcel of land described therein, exceeding the first. All purchases made for the county shall be included in one conveyance, for which the county treasurer shall receive ten dollars. Every such conveyance shall be executed by the treasurer of the county, under his hand and seal, and executed and acknowledged as other conveyances of real estate. Every certificate of conveyance executed by the county treasurer under this act may be recorded in the same manner and with like effect

as a conveyance of real estate properly acknowledged or proven. The money received by the county treasurer on every such sale shall be applied by him, after deducting the expenses thereof, in like manner as if the same had been paid to him by the collectors of the several towns.

§ 154. **Conveyance and its effect.**— A purchaser or his legal representative may, upon receiving a conveyance under and by virtue thereof, possess and enjoy for his own use the real estate described in such conveyance, unless redeemed as herein provided, and after the expiration of the time to redeem the same, may cause the occupant of such real estate to be removed therefrom, and the possession to be delivered to him in the same manner and by the same proceedings, and before the same officers as in the case of a tenant holding over after the expiration of his term without permission of his landlord.

§ 155. **When purchase money to be refunded.**— Whenever any purchaser under such sale shall be unable to regain possession of the real estate purchased by him by reason of error or irregularity in the assessment or levying of a tax, or in proceedings for the collection thereof, the board of supervisors of the county shall refund the purchase-money so paid, with interest upon the same being presented and audited as other county charges, and such moneys shall be charged over to the tax district where the irregularity arose.

§ 156. **Lands which the state owns or upon which it has a lien.** — The county treasurer of any county not embracing a portion of the forest preserve shall, at least two months prior to any tax sale to be held by him, transmit to the comptroller an accurate and complete list of all the lands in such county to be sold thereat. The state comptroller shall, at least two weeks prior to any such tax sale, transmit to such county treasurer a list of all lands advertised to be sold at such tax sale, belonging to the state, or shall then be mortgaged to the commissioners for loaning certain moneys of the United States, or against which the state holds a bond or lien, for any part of the purchase money thereof, or for which the state may then hold a tax sale certificate. The county treasurer conducting such sale shall bid

in for the state all lands described in the list transmitted to him by the comptroller, and shall, at the close of such sale, transmit to the comptroller a verified and itemized statement showing the amount of each bid made in the name of the state thereat, and the state comptroller shall, within ten days after the receipt by him of such statement, draw his warrant on the state treasurer for the amount thereof or credit the county with the amount of such statement on the books of his office.

§ 157. **Provisions relative to comptroller to apply to treasurer.** —The provisions of article six of this act, entitled sales by comptroller for unpaid taxes and redemption of lands" shall, in so far as it is not otherwise herein provided, govern and control the action of the county treasurer, who shall perform the duties therein devolved upon the comptroller and the same rights and remedies shall be deemed to exist under the provisions of this article as are provided for in said article six.

§ 158. **Article not to relate to certain cities.**— This or the preceding article shall not affect any law relating to the sale of real estate for taxes in any city.

ARTICLE VIII.

State Board of Tax Commissioners; State Board of Equalization.

Section 170. Board of tax commissioners.
171. Powers and duties of board of tax commissioners.
172. Tax commissioners to visit counties.
173. State board of equalization; powers and duties.
174. Appeals to the state board of tax commissioners from equalization of board of supervisors.
175. Appeals, how conducted.
176. Determination of appeals.
177. Costs on appeal.

§ 170. **Board of tax commissioners.**— There shall be three tax commissioners appointed by the governor by and with the advice and consent of the senate, to hold office for three years, and so classified that the term of office of one of them shall expire with the thirty-first day of December in each year. Each shall receive an annual compensation of two thousand five hun-

dred dollars, and in addition thereto the expenses actually incurred by him in the discharge of his official duties. The state assessors in office when this chapter takes effect shall continue in office hereunder as tax commissioners, and shall constitute the state board of tax commissioners. The term for which each of such commissioners was appointed shall be extended so as to include the thirty-first day of December of the calendar year in which such term expires, and his successor shall be appointed for a full term of three years commencing with the first day of January following.

§ 171. **Powers and duties of state board of tax commissioners**— The state board of tax commissioners shall:

First. Investigate and examine, from time to time, as to the methods of assessment within the state.

Second. Furnish local assessors with such information as may be necessary or proper to aid them in making the assessment thereof.

Third. Make such rules and regulations as may be necessary to enforce the provisions of this article and prepare forms for reports and assessment-rolls, and furnish the same to assessors and other officers at the expense of the state.

Fourth. Take testimony and hear proofs, under oath, with reference to any matter within the line of its official duty. Any member of such board may be designated for that purpose. And it may require from all state and municipal officers such information as may be necessary for the proper discharge of its duties.

Fifth. Hold meetings at an office to be assigned it in one of the state buildings at Albany, at such times as may be fixed by the chairman of the board or by adjournment thereof, or at such other places as it may designate.

Sixth. Employ a clerk, prescribe his duties, and fix his salary, at a sum not exceeding two thousand dollars.

Seventh. Prepare an annual report to the legislature and recommend such changes or amendments to the tax laws as it may deem advisable.

Eighth. Perform the other powers and duties conferred upon it by law.

§ 172. **Tax commissioners to visit counties.**— Two or more of the members of the board of tax commissioners shall officially visit every county in the state at least once in two years, and inquire into the methods of assessment and taxation, and ascertain whether the assessors faithfully discharge their duties and particularly as to their compliance with this act requiring the assessment of all property not exempt from taxation at its full value.

§ 173. **State board of equalization; powers and duties.**— The commissioners of the land office and the three commissioners of taxes shall constitute the state board of equalization. The state board of equalization shall meet in the city of Albany on the first Tuesday in September in each year, for the purpose of examining and revising the valuations of real and personal property of the several counties as returned to the board of tax commissioners, and shall fix the aggregate amount of assessment for each county, upon which the comptroller shall compute the state tax. Such board may increase or diminish the aggregate valuations of real property in any county by adding or deducting such sum as in its opinion may be just and necessary to produce a just relation between the valuations of real property in the state. But it shall, in no instance, reduce the aggregate valuations of all the counties below the aggregate valuations thereof as so returned. The comptroller shall immediately ascertain from this assessment, a copy of which shall be transmitted to him, the proportion of state tax each county shall pay, and mail a statement of the amount to the county clerk, and to the chairman and clerk of the board of supervisors of each county.

§ 174. **Appeals to the state board of tax commissioners from equalization by board of supervisors.**—Any supervisor may appeal in behalf of the town, city or ward, which he wholly or in part represents, to the state board of tax commissioners, from any act or decision of the board of supervisors, in the equalization of assessments and the correction of the assessment-rolls. If such appeal is brought in behalf of a town, a majority of the town board of such town, if in behalf of a city, a majority of the supervisors representing such city, or if the assessment in

the wards of any city are equalized separately and such wards have separate assessment-rolls, then the alderman or aldermen representing such ward in the common council of the city, shall first consent to and approve of the bringing of such appeal. Such appeal shall be brought within ten days after the delivery of the assessment-roll to the collector by filing in the office of the county clerk a notice thereof, with such consent indorsed thereon or annexed thereto, together with the affidavit of the supervisor so appealing, that in his opinion injustice has been done to such town, city or ward by the act or decision from which the appeal is taken; and also within such time, by serving personally or by mail, a duplicate or copy of such notice, consent and affidavit on the chairman or clerk of the board of supervisors, and by mailing such a copy or duplicate to the state board of tax commissioners.

§ 175. **Appeals, how conducted.**— The board of tax commissioners may prepare a form of petition and notice of appeal from decisions of the board of supervisors in the equalization of assessment and rules and regulations in relation to bringing such appeals to a hearing or trial thereof. Such rules shall provide for a hearing on the papers and proofs submitted to the board of supervisors on making the equalization, in case the party so desires, and also, in case the notice of appeal so specifies, for the taking of additional evidence offered by either party. The appeal shall be heard in the county in which it originated. In either case such hearing shall be had at a time and place to be fixed by the board upon notice of at least twenty days by mail to the party appealing and to the clerk of the board of supervisors of the county in which the appeal is taken. If the appellant or his successor fails to appear at the time and place appointed or upon any day to which such hearing and trial shall be adjourned, the board shall make an order dismissing the appeal, which shall have the same effect as if the appeal had not been sustained after a hearing on the merits.

§ 176. **Determination of appeals.**— On every such hearing or trial, the board of tax commissioners shall determine whether any, and if any, what deductions ought to be made from the aggregate corrected value of the real and personal property of

such tax district as made and to what tax district or districts in such county the amount of such deductions, if any, shall be added; and shall certify their determination, in writing, to such board of supervisors and forward the same by mail within ten days thereafter to the clerk of the board, directed to him at his post-office address and forward a copy thereof to the supervisor appealing. Such determination shall be carried into effect by such board at its next annual session.

§ 177. **Costs on appeal.**— The board of tax commissioners shall certify the reasonable expense on every such appeal, not exceeding the sum of two thousand dollars, for services of counsel and one thousand dollars for all other expenses, including the compensation and expense of the stenographer. If such appeal is not sustained, the costs and expenses thereof so certified shall be a charge upon the tax district or districts taking such appeal and shall be levied thereon by the board of supervisors. If the appeal is sustained, the amount of such costs and expenses so certified shall be levied by the board of supervisors upon, and collected from, the county in the assessment and collection of taxes for the current year, except the tax district or tax districts whose appeal is sustained. If there shall be appeals by more than one tax district in the county, some of which are sustained and some dismissed, the state board shall decide what portion of such costs and expenses shall be borne by any tax district whose appeal is dismissed.

ARTICLE IX.

Corporation Tax.

Section 180. Organization tax.
181. License tax on foreign corporations.
182. Franchise tax on corporations.
183. Certain corporations exempted from tax on capital stock tax.*
184. Additional franchise tax on transportation and transmission corporations and associations.
185. Franchise tax on elevated railroads or surface railroads not operated by steam.

*So in the original.

Section 186. Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.
187. Franchise tax upon insurance corporations.
188. Tax upon foreign bankers.
189. Report of corporations.
190. Value of stock to be appraised.
191. Further requirements as to reports of corporations.
192. Powers of comptroller to examine into affairs of corporations.
193. Notice of statement of tax; interest.
194. Payment of tax and penalty for failure.
195. Revision and readjustment of accounts by comptroller.
196. Review of determination of comptroller by certiorari.
197. Regulations as to such writ of certiorari.
198. Warrant for the collection of taxes.
199. Information of delinquents.
200. Action for recovery of taxes; forfeiture of charter of delinquent corporations.
201. Reports to be made by the secretary of state.
202. Exemptions from other state taxation.
203. Application of tax.

Section 180. **Organization tax.**— Every stock corporation incorporated under any law of this state shall pay to the state treasurer a tax of one-eighth of one per centum upon the amount of capital stock which the corporation is authorized to have, and a like tax upon any subsequent increase. Such tax shall be due and payable upon the incorporation of such corporation or upon the increase of its capital stock. Neither the secretary of state nor county clerk shall file any certificate of incorporation or article of association, or give any certificate to any such corporation or association until he is furnished a receipt for such tax from the state treasurer, and no stock corporation shall have or exercise any corporate franchise or powers, or carry on business in this state until such tax shall have been paid. In case of the

consolidation of existing corporations into a corporation, such new corporation shall be required to pay the tax hereinbefore provided for only upon the amount of its capital stock in excess of the aggregate amount of capital stock of said corporations. This section shall not apply to state and national banks or to building, mutual loan, accumulating fund and co-operative associations.

§ 181. **License tax on foreign corporations.**— Every foreign corporation, joint-stock company or association, except banking, fire, marine, casualty and life insurance companies, and corporations wholly engaged in carrying on manufactures in this state, co-operative fraternal insurance companies and building and loan associations, authorized to do business under the general corporation law, shall pay to the state treasurer, for the use of the state, a license fee of one-eighth of one per centum for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, to be computed upon the basis of the capital stock employed by it within this state during the first year of carrying on its business in this state. No action shall be maintained or recovery had in any of the courts in this state by such foreign corporation without obtaining a receipt for the license fee hereby imposed within thirteen months after beginning such business within the state.

§ 182. **Franchise tax on corporations.**— Every corporation, joint stock company or association incorporated, organized or formed under, by or pursuant to law in this state, shall pay to the state treasurer annually, an annual tax to be computed upon the basis of the amount of its capital stock employed within this state and upon each dollar of such amount, at the rate of one-quarter of a mill for each one per centum of dividends made and declared upon its capital stock during each year ending with the thirty-first day of October, if the dividends amount to six or more than six per centum upon the par value of such capital stock. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, the tax shall be at the rate of one and one-half mills upon such portion of the capital stock

at par as the amount of capital employed within this state bears to the entire capital of the corporation. If no dividend is made or declared, the tax shall be at the rate of one and one-half mills upon each dollar of the appraised capital employed within the state. If such corporation, joint stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six, or more than six per centum, upon the par value thereof, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon, amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto a tax shall be charged at the rate of one and one-half mills upon every dollar of the valuation made in accordance with the provisions of this act of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum. Every corporation, joint stock company or association organized, incorporated or formed under the laws of any other state or country, shall pay a like tax for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, to be computed upon the basis of the capital employed by it within this state.

§ 183. **Certain corporations exempt from tax on capital stock.**—Banks, saving banks, institutions for savings, insurance or surety corporations, manufacturing corporations to the extent only of the capital actually employed in this state in manufacturing, and in the sale of the product of such manufacturing, mining corporations wholly engaged in mining ores within this state, agricultural and horticultural societies or associations, and corporations, joint-stock companies or associations operating elevated railroads or surface railroads not operated by steam, or

formed for supplying water or gas or for electric or steam heating, lighting or power purposes, and liable to a tax under sections one hundred and eighty-five and one hundred and eighty-six of this chapter, shall be exempt from the payment of the taxes prescribed by section one hundred and eighty-two of this chapter. This exemption shall not be construed to include title guaranty or trust companies.

§ 184. **Additional franchise tax on transportation and transmission corporations and associations.**— Every corporation and joint-stock association formed for steam surface railroad, canal steamboat, ferry, express, navigation, pipe-line, transfer, baggage express, telegraph, telephone, palace car or sleeping car purposes, and all other transportation corporations not liable to taxes under sections one hundred and eighty-five or one hundred and eighty-six of this chapter, shall pay for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, an annual excise tax or license fee which shall be equal to five-tenths of one per centum upon its gross earnings within the state, which shall include its gross earnings from its transportation or transmission business originating and terminating within this state, but shall not include earnings derived from business of an interstate character. All settlements for such taxes heretofore based by the comptroller upon gross earnings excluding earnings from interstate business, have been ratified and confirmed, except that the accounts for taxation under section six of chapter three hundred and sixty-one of the laws of eighteen hundred and eighty-one, for the years eighteen hundred and ninety-two and eighteen hundred and ninety-three, shall be settled and adjusted by the comptroller by excluding the earnings of an interstate character as provided by this section.

§ 185. **Franchise tax on elevated or surface railroads not operated by steam.**— Every corporation, joint-stock company or association operating any elevated railroad or surface railroad not operated by steam shall pay to the state for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity within this state, an annual tax which shall be one per centum upon its gross earn-

ings from all sources within this state, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed by such corporation, joint-stock company or association. Any corporation, joint-stock company or association taxed under this section which has paid a tax to the state for the year ending November first, eighteen hundred and ninety-five, under section three of chapter five hundred and forty-two of the laws of eighteen hundred and eighty, as amended by chapter five hundred and twenty-two of the laws of eighteen hundred and ninety, shall be credited by the comptroller with one-third of the amount so paid in computing the taxes to be paid for the year ending June thirtieth, eighteen hundred and ninety-six.

§ 186. **Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.**— Every corporation, joint-stock company or association formed for supplying water or gas, or for electric or steam heating, lighting or power purposes, shall pay to the state for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, an annual tax which shall be five-tenths of one per centum upon its gross earnings from all sources within this state, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed by such corporation, joint-stock company or association.

§ 187. **Franchise tax upon insurance corporations.**— Every insurance or surety corporation doing business in this state shall annually pay a tax into the treasury of the state for the privilege of exercising its corporate franchises in this state, at the rate of five-tenths of one per centum upon the gross amount of premiums received for business done in this state by such company or association, person or partnership whether such premiums were in the form of money, notes, credits or any other substitute for money. Life insurance corporations and purely mutual benefit associations, whose funds for the benefit of members, their families or heirs, are made up entirely of contributions of their

members and the accumulated interest thereon, shall be exempt from the tax fixed by this section. The term "insurance corporation," as used in this article, shall include all persons and partnerships doing an insurance business in this state.

§ 188. **Tax upon foreign bankers.**— Every foreign banker doing business in this state, shall annually pay to the treasurer a tax of one-half of one per centum on his business done in this state, to be ascertained as follows: By first computing the daily average, for each month, of the moneys outstanding upon loans, and of all other moneys received, used or employed in connection with its or their business done in this state, by such banker, and by then dividing the aggregate of such monthly averages by the number of months for which such banker shall, during the year preceding, having been engaged in the business of banking in this state. The term, doing a banking business, as used in this section, means doing any such businees as a corporation may be created to do under article two of the banking law, or doing any business which a corporation is authorized by such article to do. The term, foreign banker doing a banking business in this state, as used in this section, includes:

1. Every foreign corporation doing a banking business in this state, except a national bank.

2. Every unincorporated company, partnership or association, of two or more individuals, organized under or pursuant to the laws of another state or country, doing a banking business in this state.

3. Every other unincorporated company, partnership or association, of two or more individuals, doing a banking business in this state, if the members thereof, owning more than a majority interest therein, or entitled to more than one-half of the profits thereof, or who would, if it were dissolved, be entitled to more than one-half of the net assets thereof, are not residents of this state.

4. Every nonresident of this state, doing a banking business in this state, in his own name and right only.

§ 189. **Reports of corporations.**— Corporations liable to pay a tax under this article shall report as follows:

1. **Corporations paying franchise tax.**— Every corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter shall, on or before November fifteenth in each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its authorized capital stock, the amount of stock paid in, the date and rate per centum of each dividend declared by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in this state during such year.

2. **Transportation and transmission corporations.**— Every transportation or transmission corporation, joint-stock company or association liable to pay an additional tax under section one hundred and eighty-four of this chapter, shall also, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from all sources and the amount of its gross earnings from its transportation or transmission business originating and terminating within this state.

3. **Elevated and surface railroad corporations.**— Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-five of this chapter, shall, on or before August first of each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from business done in this state, the amount of dividends of every nature declared or paid during the year ending June thirtieth, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

4. **Water-works, gas, electric, steam heating, lighting and power corporations.**— Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-six of this chapter, shall, on or before December first of each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first pre-

ceding, stating the amount of its gross earnings from business done in this state, the amount of dividends of every nature declared or paid during the year ending with October thirty-first, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

5. **Insurance corporations.**— Every insurance corporation liable to pay a tax under section one hundred and eighty-seven of this chapter, shall, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the entire amount of premiums received on business done thereby in this state during the year ending with such day, whether the premiums were in money or in the form of notes, credits or other substitutes for money.

6. **Foreign bankers.**— Every foreign banker liable to pay a tax under section one hundred and eighty-eight of this chapter shall, on or before February first in each year, make a written report to the comptroller of the condition of his business on December thirty-first preceding, stating the amount of tax for which he is liable under this article, and giving in detail the facts required by the last preceding section for the purpose of ascertaining and computing the same.

§ 190. **Value of stock to be appraised.**— In case no dividend has been declared, by a corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter, the treasurer or secretary of the company, shall, under oath, between the first and fifteenth day of November in each year, estimate and appraise the capital stock of such company upon which no dividend has been declared, or upon which the dividend amounted to less than six per centum at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and shall forward the same to the comptroller with the report provided for in the last section. If the comptroller is not satisfied with the valuation so made and returned he is authorized and empowered to make a valuation thereof, and settle an account upon the valuation so made by him, and the taxes, penalties and interest to be paid the state.

§ 191. **Further requirements as to report of corporations.**— Every report required by this article shall have annexed thereto, the affidavit of the president, vice-president, secretary or treasurer of the corporation, association or joint-stock company or of the person or one of the persons, or the members of the partnership making the same, to the effect that the statements contained therein are true. Such reports shall contain any other data, information or matter which the comptroller may require to be included therein, and he may prescribe the form in which such reports shall be made and the form of oath thereto. When so prescribed such form shall be used in making the report. The comptroller may require at any time a further or supplemental report under this article, which shall contain information and data upon such matters as the comptroller may specify.

§ 192. **Powers of comptroller to examine into affairs of corporation.**— In case any report required by any of the preceding sections of this article shall be unsatisfactory to the comptroller, or if any such report is not made as herein required, the comptroller is authorized to make an estimate of the dividends paid by such corporation and the value of the capital stock employed by it, from any such report or from any other data, and to order and state an account according to the estimate and value so made by him for the taxes, percentage and interest due the state from such corporation, association, joint-stock company, person or partnership. The comptroller shall also have power to examine or cause to be examined in case of a failure to report or in case the report is unsatisfactory to him, the books and records of any such corporation, joint-stock association, company, foreign banker, person or partnership, and may hear testimony and take proofs material for his information, either personally or he may appoint a commissioner by a written appointment under his hand and official seal for that purpose. Every commissioner so appointed shall be authorized to make such examination and take such testimony and hear such proofs and report the proofs and testimony so taken and the result of his examination so made and the facts found by him to the

comptroller. The comptroller shall, therefrom, or from any other data which shall be satisfactory to him, order and state an account for the tax due the state, together with the expenses of such examination and the taking of such testimony and proofs. Such expenses shall be fixed and adjusted by the comptroller.

§ 193. **Notice of statement of tax; interest.**— Upon auditing and stating every account for taxes or other charges under this article, the comptroller shall forthwith send notice thereof in writing to the person, partnership, company, association or corporation against whom the same is made, which notice may be mailed to the post-office address of such person, partnership, association, company or corporation. All accounts so audited and stated shall bear interest upon the total amount found due thereon to the state, for taxes, percentage, interest and other charges, from the expiration of thirty days after sending such notice until payment thereof shall be made.

§ 194. **Payment of tax and penalty for failure.**—A tax imposed by sections one hundred and eighty-two or one hundred and eighty-six of this chapter, shall be due and payable into the state treasury on or before the fifteenth day of January in each year. A tax imposed by section one hundred and eighty-four of this chapter on a transportation or transmission corporation, or by section one hundred and eighty-five, on elevated railroads or surface railroads not operated by steam, or by section one hundred and eighty-seven of this chapter on an insurance corporation, shall be due and payable into the state treasury on or before the first day of August in each year. A tax imposed by section one hundred and eighty-eight of this chapter on a foreign banker shall be due and payable into the state treasury on or before February first in each year. If such tax in any case is not paid within thirty days after the same becomes due, or if the report of any such corporation is not made within the time required by this article, the corporation, association, joint-stock company, person or partnership, liable to pay the tax, shall pay into the state treasury in addition to the amount of such tax, a sum equal to five per centum thereof, and one per centum additional for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. Every cor-

poration, association, joint-stock company, person or partnership failing to make the annual report required by this article, or failing to make any special report required by the comptroller, within any reasonable time to be specified by him, shall forfeit to the people of the state the sum of one hundred dollars for every such failure, and the additional sum of ten dollars for each day that such failure continues. Such tax shall be a lien upon and bind all the real and personal property of the corporation, joint-stock company or association liable to pay the same from the time when it is payable until the same is paid in full.

§ 195. **Revision and readjustment of accounts by comptroller.**— The comptroller may, at any time within one year from the time any such account shall have been audited and stated, and notice thereof sent to the person, partnership, company, association or corporation against whom it is stated, revise and readjust such account upon application therefor by the party against whom the account is stated or by the attorney-general, and if it shall be made to appear upon any such application by evidence submitted to him or otherwise, that any such account included taxes or other charges which could not have been lawfully demanded, or that payment has been legally made or exacted of any such account, he shall resettle the same according to law and the facts, and charge or credit, as the case may require, the difference, if any, resulting from such revision or resettlement upon the accounts for taxes of or against any such person, partnership, company, association or corporation. The comptroller shall forthwith send written notice of its determination upon such application to the applicant, which notice may be sent by mail to his post-office address.

§ 196. **Review of determination of comptroller by certiorari.**— The determination of the comptroller upon any application made to him by any person, partnership, company, association or corporation for a revision and resettlement of any account, as prescribed in this article, may be reviewed both upon the law and the facts, upon certiorari by the supreme court at the instance of any person, partnership, company, association or corporation affected thereby, and in the name and on behalf

of the people of the state. For the purpose of such review the comptroller shall return, on such certiorari, the accounts and all the evidence before him on such application, and all the papers and proofs upon the original statement of such account and all proceedings thereon. If the original or resettled accounts shall be found erroneous or illegal, either in point of law or of fact, by the supreme court, upon any such review, the accounts reviewed shall then be corrected and restated, and from any determination of the supreme court upon any such review, an appeal to the court of appeals may be taken by either party.

§ 197. **Regulations as to such writ of certiorari.**— No certiorari to review any audit and statement of an account or any determination by the comptroller under this article, shall be granted unless notice of application therefor is made within thirty days after the service of the notice of such determination. Eight days' notice shall be given to the comptroller of the application for such writ. The full amount of the taxes, percentage, interest and other charges, audited and stated in such account must be deposited with the state treasurer before making the application and an undertaking filed with the comptroller in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such writ is dismissed or the determination of the comptroller affirmed, the applicant for the writ will pay all costs and charges which may accrue against him, or it in the prosecution of the writ, including costs of all appeals.

§ 198. **Warrant for the collection of taxes.**—After the expiration of thirty days from the sending by the comptroller of a notice of a settlement of an account as provided in this article, unless the amount of such account shall have been paid or deposited with the state treasurer, if an appeal or other proceedings have been taken to review the same, and the undertaking given as provided in this article, the comptroller may issue a warrant under his hand and official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person, partnership, company, association or corporation against which such account is stated,

found within his county for the payment of the amount thereof with interest thereon and costs of executing the warrant, and to return such warrant to the comptroller and pay to the state treasurer the money collected by virtue thereof, by a time to be therein specified, not less than sixty days from the date of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the person, partnership, company, association or corporation against which it is issued, from the time an actual levy shall be made by virtue thereof. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects, with like effect, and in the same manner as prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

§ 199. **Information of delinquents.**—It shall be the duty of any person having knowledge of the evasion of taxation under this article by any corporation, association, joint-stock company, partnership or person liable to taxation thereunder, for any omission on their part to make the reports required by this article, to make a written report thereof to the comptroller of the state, with such information as may be in his possession as may lead to the recovery of any taxes due the state therefrom. If, in his opinion, the interests of the state require it, the comptroller may employ such person to assist in the collection and preparation of evidence and in the prosecution and trial of actions for such taxes, and so much of the same, not exceeding ten per centum thereof, as may be collected from any such delinquent corporation, association, company, partnership or person, by reason of such report and such services, as shall have been agreed upon between such person and the comptroller or attorney-general as a compensation therefor, shall be paid to such person, and nothing shall be paid to such person for such report or services unless there shall be a recovery of taxes by reason thereof.

§ 200. **Action for recovery of taxes; forfeiture of charter of delinquent corporation.**—An action may be brought by the attorney-general, at the instance of the comptroller, in the name

of the state, to recover the amount of any account audited and stated by the comptroller under the provisions of this article. If any such account shall remain unpaid at the expiration of one year after notice of the statement thereof has been sent as required by this article, and the comptroller is satisfied that the failure to pay the same is intentional, he shall so report to the attorney-general, who shall immediately bring an action, in the name of the people of the state, for the forfeiture of the franchise of any corporation, joint-stock company or association failing to make such payment, and if it is found that such failure was intentional, judgment shall be rendered in such action for the forfeiture of its franchise and for its dissolution, and thereafter such franchise shall be annulled.

§ 201. **Reports to be made by the secretary of state.**— The secretary of state shall transmit on the first day of each month to the comptroller, a report of the stock corporations whose certificates of incorporation are filed, or of the foreign stock corporations to whom a certificate of authority has been issued to do business in this state, during the preceding month. Such report shall state the name of the corporation, its place of business, the amount of its capital stock, its purposes or objects, the names and places of residence of its directors, and, if a foreign corporation, its place of business within the state. The comptroller may prescribe the forms and furnish the blanks for such reports. The secretary of state shall make like reports to the comptroller whenever required by him relating to any such corporations whose certificates have been filed or to whom a certificate of authority has been issued prior to the time when this article takes effect, and during any period of time specified by the comptroller in his request for such report.

§ 202. **Exemptions from other state taxation.**— The personal property of every corporation, company, association or partnership taxable under this article, other than for an organization tax, shall be exempt from assessment and taxation upon its personal property for state purposes, if all taxes due and payable under this article have been paid thereby. The personal property of a private or individual banker, actually employed

in his business as such banker, shall be exempt from taxation for state purposes, if such private or individual banker shall have paid all taxes due and payable under this article. Such corporation and private or individual banker shall in no other respect be relieved from assessment and taxation by reason of the provisions of this article.

§ 203. **Application of taxes.**— The taxes imposed by this article and the revenues thereof shall be applicable to the general fund of the treasury and to the payment of all claims and demands which are a lawful charge thereon.

ARTICLE X.

Taxable Transfers.

Section 220. Taxable transfers.
221. Exceptions and limitations.
222. Lien of tax and payment thereof.
223. Discount, interest and penalty.
224. Collection of tax by executors, administrators and trustees.
225. Refund of tax erroneously paid.
226. Deferred payments.
227. Taxes upon devises and bequests in lieu of commissions.
228. Liability of certain corporations to tax.
229. Jurisdiction of the surrogate.
230. Appointment of appraisers.
231. Proceedings by appraisers.
232. Determination by surrogate.
233. Surrogate's assistants in New York city and Erie county.
234. Surrogate's assistant in Kings county.
235. Proceedings for the collection of taxes.
236. Receipt from the county treasurer and comptroller.
237. Fees of county treasurer and comptroller.
238. Books and forms to be furnished by the state comptroller.
239. Reports of surrogate and county clerk.

Section 240. Reports of county treasurers and comptrollers* of the city of New York.

241. Application of taxes.

242. Definitions.

Section 220. **Taxable transfers.**—A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:

1. When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

2. When the transfer is by will or intestate law, of property within the state, and the decedent was a nonresident of the state at the time of his death.

3. When the transfer is of property made by a resident or by a nonresident, when such nonresident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficialy entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per centum upon the clear market value of such property, except as otherwise prescribed in the next section.

§ 221. **Exceptions and limitations.**— When the property or any beneficial interest therein passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor or to any person to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, or to any

*So in the original.

lineal descendant of such decedent, grantor, donor or vendor born in lawful wedlock, such transfer of property shall not be taxable under this act, unless it is personal property of the value of ten thousand dollars or more, in which case it shall be taxable under this act at the rate of one per centum upon the clear market value of such property. But any property heretofore or hereafter devised or bequeathed to any person who is a bishop or to any religious corporation shall be exempted from and not subject to the provisions of this act.

§ 222. **Lien of tax and payment thereof.**— Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the administrators, executors and trustees of every estate so transferred shall be personally liable for such tax until its payment. The tax shall be paid to the treasurer or comptroller of the county of the surrogate having jurisdiction as herein provided; and said treasurer or comptroller shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment, one of which he shall immediately send to the comptroller of the state, whose duty it shall be to charge the treasurer or comptroller so receiving the tax with the amount thereof and to seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this act unless he shall produce a receipt so sealed and countersigned by the comptroller or a copy thereof certified by him, or unless a bond shall have been filed as prescribed by section two hundred and twenty-six of this chapter. All taxes imposed by this article shall be due and payable at the time of the transfer; provided, however, that taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof can not be ascertained at the time of the transfer as herein provided shall accrue and

become due and payable when the persons or corporations beneficially entitled thereto shall come into possession or enjoyment thereof.

§ 223. **Discount, interest and penalty.**— If such tax is paid within six months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reasons of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax can not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged. In all cases when bond shall be given under the provisions of section two hundred and twenty-six of this chapter, interest shall be charged at the rate of six per centum from the accrual of the tax until the date of payment thereof.

§ 224. **Collection of tax by executors, administrators and trustees.**— Every executor, administrator or trustee, shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasury or comptroller, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor or trustee, and the tax shall remain a lien or charge on such

real property until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section two hundred and thirty-five of this chapter. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an appointment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

§ 225. **Refund of tax erroneously paid.**— If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer, comptroller of the city of New York, or to the state treasurer, or by such treasurer, comptroller or state treasurer, if such tax has been paid to him. When any amount of said tax shall have been paid erroneously into the state treasury, it shall be lawful for the comptroller of this state, upon satisfactory proof presented to him of the facts, to require the amount of such erroneous or illegal payment to be refunded to the executor, administrator, trustee, person or persons who have paid any such tax in error, from the treasury; or the said comptroller may, by order, direct and allow the treasurer of any county or the comptroller of the city of New York to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody, to the credit of such taxes, and credit himself with the same in his quarterly account rendered to the comptroller of this state under this article; provided, however, that all applications for such refunding of erroneous taxes shall be made within five years from the payment thereof.

§ 226. **Deferred payment.**— Any person or corporation beneficially interested in any property chargeable with a tax under this article, and executors, administrators and trustees thereof may elect within one year from the date of the transfer thereof, as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in penalty of three times the amount of any such tax, with such sureties as the surrogate of the proper county may approve, conditioned for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate. Such bond must be executed and filed and a full return of such property upon oath made to the surrogate within one year from the date of transfer thereof as herein provided, and such bond must be renewed every five years.

§ 227. **Taxes upon devises and bequests in lieu of commissions.**— If a testator bequeaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised, above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this article.

§ 228. **Liability of certain corporations to tax**— If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the comptroller of the city of New York on the transfer thereof. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decendent, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent unless notice of the time and place of

such intended transfer be served upon the county treasurer or comptroller at least five days prior to the said transfer. And it shall be lawful for the said county treasurer or comptroller, personally or by representative, to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination shall render said safe deposit company, trust company, bank or other institution, person or persons liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this article.

§ 229. **Jurisdiction of the surrogate.**— The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this article, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, and to do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogates' courts shall be entitled to exercise any such jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the code of civil procedure shall set forth the name of the county treasurer or comptroller as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon the presentation thereof the surrogate shall issue a citation directed to such county treasurer or comptroller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the county treasurer or comptroller were a creditor of the decedent.

§ 230. **Appointment of appraisers.**—The surrogate, upon the application of any interested party, including county treasurers, or the comptroller of New York city, or upon his own motion, shall, as often as and whenever occasion may require, appoint a competent person as appraiser, to fix the fair market value, at the time of the transfer thereof of property of persons whose estates shall be subject to the payment of any tax imposed by this article. If the property upon the transfer of which a tax is imposed shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent estate, or shall be a remainder or reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after such transfer, or as soon thereafter as may be practicable, at the fair and clear market value thereof at that time; provided, however, that when such estate, income or interest shall be of such a nature that its fair and clear market value can not be ascertained at such time, it shall be appraised in like manner at the time when such value first became ascertainable. The value of every future, or contingent or limited estate, income, interest or annuity dependent upon any life or lives in being shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies; except that the rate of interest for computing the present value of all future and contingent interests or estates shall be five per centum per annum. Whenever an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such limitation.

§ 231. **Proceedings by appraisers.**—Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the county treasurer or comptroller, and to such persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed,

and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matter as said surrogate may order or require. Every appraiser shall be paid on the certificate of the surrogate at the rate of three dollars per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, by the county treasurer or comptroller out of any funds he may have in his hands on account of any tax imposed under the provisions of this article.

§ 232. **Determination of surrogate.**—The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the surrogate and the other in the office of the state comptroller. From such report and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course determine the cash value of all estates and the amount of tax to which the same are liable; or the surrogate may so determine the cash value of all estates and the amount of tax to which the same are liable, without appointing an appraiser. The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future contingent estates, income or interest limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The comptroller of the state of New York or any person dissatisfied with the appraisement or assessment and determination of tax, may appeal therefrom to the surrogate within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall

state the grounds upon which the appeal is taken. The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, to all parties known to be interested therein, including the state comptroller. Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the comptroller of the state may, of he believes that such appraisal, assessment or determination has been fraudulently, collusively, or erroneously made, make application to a justice of the supreme court of the judicial district in which the former owner of such estate resided, for a reappraisal thereof. The justice to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties and receive the compensation provided by sections two hundred and thirty and two hundred and thirty-one of this article. Such compensation shall be payable by the county treasurer or comptroller, out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such justice as are herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surrogate, and shall be filed by such justice in the office of the state comptroller.

§ 233. **Surrogate's and district attorney's assistants in New York city and Erie county.***—The comptroller of the city and county of New York shall retain, out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the surrogates in the city and county of New York with an assistant, appointed by said surrogates, who shall be known as the transfer tax assistant, whose salary shall be four thousand dollars a year; a transfer tax clerk, whose salary shall be two thousand four hundred dollars a year; an assistant clerk, whose salary shall be one thousand eight hundred dollars a year, and

* Compare L. 1892, ch. 399, § 14, post.

a recording clerk, whose salary shall be one thousand three hundred dollars a year, said salaries to be paid monthly; and a further sum of money, not exceeding five hundred dollars a year, to be used to pay the expenses of the said surrogates, necessarily incurred in the assessment and collection of said tax, said amounts to be paid upon the certificates and requisitions of said surrogates respectively. The comptroller of the city and county of New York shall also retain, out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the district attorney in the city and county of New York with an assistant, appointed by said district attorney, who shall be known as the transfer tax assistant, whose salary shall be three thousand dollars a year; a transfer tax clerk whose salary shall be two thousand four hundred dollars a year, and a surrogate's process server, whose salary shall be one thousand two hundred dollars a year, said salary to be payable monthly; and a further sum of money not exceeding five hundred dollars a year, to be used to pay the expenses of the said district attorney, for the conduct and prosecution of the proceedings mentioned in section two hundred and thirty-five of this chapter, said amounts to be paid upon the certificate and requisition of said district attorney. The county treasurer of the county of Erie shall also retain out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the district attorney in the county of Erie with an assistant, appointed by the said district attorney, who shall be known as the transfer tax assistant, whose salary shall be two thousand dollars a year, said salary to be paid monthly.

§ 234. **Surrogate's assistants in Kings county.**— The county treasurer of the county of Kings shall, from time to time, retain out of any funds which he may have in his hands, on account of taxes collected under this article, a sum of money sufficient to provide the surrogate of the county of Kings with an assistant, to be known as the transfer tax assistant and a transfer tax clerk. Such assistants shall be appointed by the surrogate, and the transfer tax assistant shall receive an annual salary of four thousand dollars, and the transfer tax clerk, an annual salary of two thousand dollars. Such salaries shall be payable monthly.

Such county treasurer shall also retain, out of such funds, a further sum not exceeding five hundred dollars in any one year, for the necessary expenses of such surrogate, in the assessment and collection of such tax. Such salaries and said amount shall be paid upon the certificates and requisitions of such surrogate, respectively.

§ 235. **Proceedings for the collection of taxes.**— If the treasurer or comptroller of any county shall have reason to believe that any tax is due and unpaid under this article, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The surrogate, upon such application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the code of civil procedure for the service of citations out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon request of the district attorney, treasurer or comptroller of the county of the comptroller of the state, furnish, without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree after the collection and payment of the tax to the treasurer or comptroller may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum

of one hundred dollars, or where there has been a contest the sum of two hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state treasurer shall pay or allow to the treasurer or the comptroller of a county all expenses incurred for the service of citations and other lawful disbursements not otherwise paid. In proceedings to which any county treasurer or comptroller is cited as a party under sections two hundred and thirty and two hundred and thirty-one of this article, the state comptroller is authorized to designate and retain counsel to represent such county treasurer or comptroller therein, and to direct such county treasurer or comptroller to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax. And the comptroller of the state is hereby authorized, with the approval of the attorney-general, and a justice of the supreme court of the judicial district in which the former owner resided, to compromise and settle the amount of such tax in any case where controversies have arisen or may hereafter arise as to the relationship of the beneficiaries to the former owner thereof.

§ 236. **Receipt from the county treasurer and comptroller.**— Any person shall upon the payment of the sum of fifty cents be entitled to a receipt from the county treasurer of any county or the comptroller of the city of New York, or at his option to a copy of a receipt that may have been given by such treasurer or comptroller for the payment of any tax under this article, under the official seal of such treasurer or comptroller, which receipt shall designate upon what real property, if any, of which any decedent may have died seized, such tax shall have been paid, by whom paid, and whether in full of such tax. Such receipt may be recorded in the clerk's office of the county in which such property is situate, in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

§ 237. **Fees of county treasurer and comptroller.**— The treasurer of each county and the comptroller of the city and county of New York, shall be allowed to retain on all taxes paid and accounted for by him each year, under this article, five per

centum on the first fifty thousand dollars, three per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers, except that in the counties of Erie and Monroe such per centum shall be credited to and belong to the county where collected.

§ 238. **Books and forms to be furnished by the state comptroller.** — The comptroller of the state shall furnish to each surrogate, a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places, residence and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of annuities, life estates, terms of years, and other property of any such decedent, or given by him in his will or otherwise, as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this article filed with him. The state comptroller shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book.

§ 239. **Reports of surrogate and county clerk.**— Each surrogate shall, on January, April, July and October first of each year, make a report in duplicate, upon the forms furnished by the comptroller containing all the data and matters required to be

entered in such book, one of which shall be immediately delivered to the county treasurer or comptroller and the other transmitted to the state comptroller. The county clerk of each county shall, at the same times, make reports in duplicate, containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property transferred, one of which duplicates shall be immediately delivered to the county treasurer or comptroller and the other transmitted to the state comptroller.

§ 240. **Reports of county treasurer and of the comptroller of the city of New York.**— Each county treasurer and the comptroller of the city of New York shall make a report, under oath, to the state comptroller, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state comptroller. He shall, at the same time, pay the state treasurer all taxes received by him under this article and not previously paid into the state treasury, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum.

§ 241. **Application of taxes.**— All taxes levied and collected under this article shall be paid into the treasury of the state for the use of the state, and shall be applicable to the expenses of the state government and to such other purposes as the legislature shall by law direct.

§ 242. **Definitions.** — The words "estate" and "property," as used in this article, shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this article and not as the property or interest therein passing or transferred to individual

legatees, devisees, heirs, next of kin, grantees, donees or vendees, and shall include all property or interest therein, whether situated within or without this state, over which this state has any jurisdiction for the purposes of taxation. The word "transfer," as used in this article, shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words "county treasurer," "comptroller" and "district attorney," as used in this article shall be taken to mean the treasurer, comptroller or district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-nine of this article.

ARTICLE XI.

Procedure.

Section 250. Contents of petition.
251. Allowance of writ of certiorari.
252. Return of writ.
253. Proceeding upon return.
254. Costs.
255. Appeals.
256. Refund of tax paid upon illegal, erroneous or unequal assessment.
257. When county court may apportion tax.
258. Application to county court where taxpayer has removed from the county.
259. Supplementary proceedings to collect a tax.
260. Power of county court when collector fails to pay over.
261. Payment of moneys collected.
262. Collection of deficiency from collector's bondsmen.
263. Attorney-general to bring action for sequestration.
264. Settlement of conflicting claims to surplus of tax sale.

Section 250. **Contents of petition.**—Any person assessed upon any assessment-roll, claiming to be aggrieved by any assessment for property therein, may present to the supreme court a

petition duly verified setting forth that the assessment is illegal, specifying the grounds of the alleged illegality, or if erroneous by reason of overvaluation, stating the extent of such overvaluation, or if unequal in that the assessment has been made at a higher proportionate valuation than the assessment of other property on the same roll by the same officers, specifying the instances in which such inequality exists, and the extent thereof, and stating that he is or will be injured thereby. Such petition must show that application has been made in due time to the proper officers to correct such assessment. Two or more persons assessed upon the same roll who are affected in the same manner by the alleged illegality, error or inequality, may unite in the same petition.

§ 251. **Allowance of writ of certiorari.**—Such petition must be presented to a justice of the supreme court or at a special term of the supreme court in the judicial district in which the assessment complained of was made, within fifteen days after the completion and filing of the assessment-roll and the first posting or publication of the notice thereof as required by this chapter. Upon the presentation of such petition, the justice or court may allow a writ of certiorari to the officers making the assessment, to review such assessment, and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days, and may be extended by the court or a justice thereof. Such writ shall be returnable to a special term of the supreme court of the judicial district in which the assessment complained of was made. The allowance of the writ shall not stay the proceedings of the assessors or other persons to whom it is directed or to whom the assessment is delivered, to be acted upon according to law.

§ 252. **Return to writ.**—The officers making a return to such writ shall not be required to return the original assessment-roll or other original papers acted upon by them, but it shall be sufficient to return certified or sworn copies of such roll or papers, or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be

pertinent and material to show the value of the property assessed on the roll and the grounds for the valuation made by the assessing officers and the return must be verified.

§ 253. **Proceedings upon return.**— If it shall appear upon the return to any such writ that the assessment complained of is illegal or erroneous or unequal for any of the reasons alleged in the petition, the court may order such assessment, if illegal, to be stricken from the roll, or if erroneous or unequal, it may order a re-assessment of the property of the petitioner, or the correction of his assessment upon the roll, in whole or in part, in such manner as shall be in accordance with law, or as shall make it conform to the valuations and assessments of other property upon the same roll and secure equality of assessment. If upon the hearing it shall appear to the court, that testimony is necessary for the proper disposition of the matter, it may take evidence or may appoint a referee to take such evidence as it may direct, and report the same to the court, with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. A new assessment or correction of an assessment made by order of the court shall have the same force and effect as if it had been so made by the proper officers within the time prescribed by law for making such assessment.

§ 254. **Costs.**— Costs shall not be allowed against the officers whose proceedings may be reviewed under any such writ unless it shall appear to the court, that they acted with gross negligence or in bad faith or with malice in making the assessment complained of. If the writ shall be quashed or the prayer of the petitioner denied, costs shall be awarded against the petitioner, not exceeding the costs and disbursements taxable in an action upon the trial of an issue of fact in the supreme court.

§ 255. **Appeals.**— An appeal may be taken by either party from an order, judgment or determination under this article as from an order, and it shall be heard and determined in like manner as appeals in the supreme court from orders. All issues and appeals in any proceeding under this article shall have

preference over all other civil actions and proceedings in all courts.

§ 256. **Refund of tax paid upon illegal, erroneous or unequal assessment.**—If in a final order in any such proceeding it shall be ordered or adjudged that the assessment complained of was illegal, erroneous or unequal, and such order shall not be made in time to enable the assessors or other officers to make a new or corrected assessment for the use of the board of supervisors, then at the first annual session of the board of supervisors after such correction there shall be audited and allowed to the petitioner and included in the tax levy of such town, village or city, made next after the entry of such order, and paid to the petitioner, the amount paid by him, in excess of what the tax would have been if the assessment had been made as determined by such order of the court, together with interest thereon from the date of payment. In case the amount deducted from such assessment by such order exceeds ten thousand dollars, so much thereof as shall be refunded by reason of such corrected assessment, other than the proportion or percentage thereof collected for such town, village or city purposes, shall be levied upon the county at large and paid to the petitioner without further audit. The board of supervisors shall audit and levy upon such town, village or city, the proportion or percentage of such excess of tax collected for such town, village or city purposes, which shall be collected and paid to the petitioner without other or further audit.

§ 257. **When county court may apportion tax.**—When the premises of one person shall have been wrongfully assessed and taxed in with the premises of another, the person aggrieved thereby may, upon application to the county court of the county in which the property is situated, on petition duly verified, and on eight days' notice to the assessors of the town in which the premises are situated, and to the party whose premises are included in such wrongful assessment, have such assessment and tax apportioned by such county court. The county court shall take such evidence as may be necessary to determine the facts,

and shall fix and specify the amount of the assessment and tax properly chargeable to the petitioner's property, and to the other party chargeable therewith. The collector of the town, upon receiving a copy of the order of the county court, shall forthwith change the assessment-roll and tax to conform to such order, and shall receive the amount apportioned upon the premises of the petitioner in full for the tax upon such property.

§ 258. **Application to county court where taxpayer has removed from the county.**— If it shall satisfactorily appear by affidavit to the county court of any county that a tax legally levied therein, except upon real property of nonresidents, can not be collected because of the removal of the person taxed to any other county of the state, such court shall, upon application of the collector of any tax district or of the county treasurer of the county, grant an order, directed to the sheriff of the county where such person may be, to collect the same out of his personal property, with interest at the rate of eight per centum per annum from the date of said order. Such order shall be filed in the office of the clerk of the county in which it is granted, and a certified copy thereof delivered to the constable or sheriff of the county where the person liable for the tax may be, and such constable or sheriff, on receiving the same shall execute it, and make a like return, and be entitled to the same fees and subject to the same liabilities and penalties for neglect as upon execution from any court of record. The sheriff receiving such moneys shall pay the same to the county treasurer of the county where it was levied, to the credit of the town in which it was assessed. This provision shall also apply to taxes levied upon rents reserved as upon personal property where such taxes remain unpaid.

§ 259. **Supplementary proceedings to collect tax.**— If a tax exceeding ten dollars in amount levied against a person or corporation is returned by the proper collector uncollected for want of personal property out of which to collect the same, the supervisor of the town or ward, or the county treasurer or the president of the village, if it is a village tax, may, within one year thereafter, apply to the court for the institution of proceedings

supplementary to execution, as upon a judgment docketed in such county, for the purpose of collecting such tax and fees, with interest thereon from the fifteenth day of February after the levy thereof. Such proceedings may be taken against a corporation, and the same proceedings may thereupon be had in all respects for the collection of such tax as for the collection of a judgment by proceedings supplementary to execution thereon against a natural person, and the same costs and disbursements may be allowed against the person or corporation examined as in such supplementary proceedings but none shall be allowed in his or its favor. The tax, if collected in such proceeding, shall be paid to the county treasurer or to the supervisor of the town, and if a village tax, to the treasurer of the village. The costs and disbursements collected shall belong to the party instituting the proceedings, and shall be applied to the payment of the expense of such proceeding. The president of a village and a county treasurer shall have no compensation for any such proceeding. A supervisor shall have no other compensation except his per diem pay for time necessarily spent in the proceeding.

§ 260. **Power of county court when collector fails to pay over.**—If any collector shall neglect or refuse to pay over the moneys collected by him, to any of the persons to whom he is required to pay the same by his warrant, or to account for the same as unpaid, the county court, on proof of such fact by affidavit, on application of the county treasurer, shall make an order directed to the sheriff of the county, commanding him to levy such sum as shall remain unpaid by such collector out of his property, personal and real, and pay the same to the county treasurer, within sixty days from the date of such order. The sheriff shall cause the same to be executed, and pay to the county treasurer the money levied by virtue thereof, deducting for his fees the same compensation that the collector would have been entitled to retain. If the whole sum due from the collector, or if a part only, or if no part thereof, shall be collected, the sheriff shall state the fact in his return, which shall be made as in the case of an execution, and the county treasurer shall give notice to the supervisor of the town, city or division thereof, of any amount which may remain due from such collector. If the sheriff shall neglect to

execute the order, or to pay over the money collected thereon, within the time limited thereby, he shall be liable therefor as in case of an execution, and the county treasurer shall immediately prosecute such sheriff and his sureties for the sum due from him, which sum when collected shall be paid into the county treasury.

§ 261. **Payment of moneys collected.**— The county treasurer shall pay over the moneys received from the sheriff upon such order in the manner directed by the warrant to the collector. If the whole amount of moneys due from the collector shall not be collected on such warrant, or otherwise, the county treasurer shall first retain the amount which ought to have been paid to him before making any payment to the town officers.

§ 262. **Collection of deficiency from collector's bondsmen.**— If it appears that the whole or any part of the moneys due from the collector has not been thus collected, the county treasurer shall forthwith give notice to the supervisor of the town or ward of the amount still due from such collector. The supervisor shall forthwith cause the undertaking of the collector to be prosecuted, and shall be entitled to recover thereon, the sum due from the collector with costs of the action. The moneys received shall be applied and paid by the supervisor in the same manner as they should have been by the collector.

§ 263. **Attorney-general to bring action for sequestration.**— It shall be the duty of the attorney-general, on being informed by the comptroller or by the county treasurer of any county that any incorporated company refuses or neglects to pay the taxes imposed upon it, pursuant to articles one and two of this chapter, to bring an action in the supreme court for the sequestration of the property of such corporation and the court may so sequestrate the property of such corporation for the purpose of satisfying taxes in arrears, with the costs of prosecution, and may, also, in its discretion, enjoin such corporation and further proceedings under its charter until such tax and the costs incurred in the action shall be paid. The attorney-general may recover such tax with costs from such delinquent corporation by action in any court of record.

§ 264. **Settlement of conflicting claims to surplus of tax sale** — Whenever a surplus from the sale of any property, for unpaid taxes in the hands of the supervisor of a town, shall be claimed by any person, other than the person for whose tax such property was sold, and such claim shall not be settled by a stipulation filed with the supervisor, as provided by this chapter, such claimant may maintain an action against such person, or such person may maintain an action against such claimant, to recover such money and, for the purposes of such action, the defendant shall be deemed to be in possession of the surplus in the hands of the supervisor. Upon the production of a certified copy of a final judgment, rendered in favor of either party, the supervisor shall pay such surplus to the party recovering the same. No other cause of action shall be joined, nor any set-off or counter-claim be allowed in an action brought pursuant to this section, and if an execution issue on a judgment rendered in such action, it shall direct that the costs only of such judgment be levied thereon.

ARTICLE XII.

Laws Repealed; When to Take Effect.

Section 280. Laws repealed.
281. When to take effect.

§ 280. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 281. **When to take effect.**— This chapter shall take effect June fifteenth, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

REVISED STATUTES.		Sections.
Part I, ch. 13		All, except § 7 of tit. VI.
Part III, ch. 8, tit. XVII		§§ 28, 29, 30.
LAWS OF—	**Chapter.**	
1835	11	All.
1836	461	All.
1841	341	All

L. 1896, ch. 908. Ch. 24, G. L.

LAWS OF—	Chapter.	Sections.
1842	154	All.
1842	318	All.
1845	180	29, 30, 31, 32.
1846	327	All.
1847	455	16.
1847	482	All.
1849	180	All.
1851	176	All.
1851	371	All.
1852	46	All.
1852	282	All.
1853	69	All.
1853	406	All.
1853	469	All.
1854	393	All.
1855	37	All.
1855	83	All.
1855	327	All.
1855	427	All.
1856	183	All.
1857	7	All.
1857	456	All.
1857	536	All.
1857	585	All.
1858	110	All.
1858	357	All.
1859	312	All.
1860	209	All.
1862	194	All.
1862	285	1.
1865	453	All.
1866	136	All.
1866	528	All.
1866	820	All.
1867	361	All.
1867	694	All.
1868	575	All.

LAWS OF—	Chapter.	Sections
1869	859	All.
1870	280	All.
1870	325	All.
1870	492	Extract from § 2, authorizing comptroller to designate papers in which notice of sale of lands for nonpayment of taxes shall be published.
1870	506	2, 3, 4, 5.
1871	110	All.
1873	327	All.
1873	809	All.
1874	351	All.
1875	331	All.
1875	466	All.
1875	474	All.
1876	49	All.
1876	96	All.
1876	101	All.
1878	152	All.
1879	492	All.
1880	80	All.
1880	91	All.
1880	269	All.
1880	327	All.
1880	448	All.
1880	542	All.
1880	552	All.
1881	8	All.
1881	166	All.
1881	293	All.
1881	361	All.

L. 1896, ch. 908. Ch. 24, G. L.

LAWS OF—	Chapter.	Sections.
1881	402	5.
1881	433	All.
1881	640	All.
1882	151	All.
1882	409	312-327, inclusive.
1883	342	All.
1883	392	All.
1883	397	All.
1883	464	All.
1884	57	All.
1884	153	All.
1884	280	All.
1884	353	All.
1884	414	All.
1884	435	All.
1884	537	All.
1885	10	All.
1885	32	All.
1885	201	All.
1885	215	All.
1885	340	12.
1885	359	All.
1885	411	All.
1885	453	All.
1885	501	All.
1886	59	All.
1886	102	All.
1886	143	All.
1886	266	All.
1886	315	All.
1886	659	1, 2, 3, 5, 6.
1886	679	All.
1887	284	All.
1887	342	All.
1888	110	All.
1889	191	All.

	Ch. 24, G. L.	L. 1896, ch. 908.
LAWS OF—	Chapter.	Sections.
1889	193	All.
1889	353	All.
1889	462	All.
1889	463	All.
1889	469	All.
1889	563	All.
1890	145	All.
1890	174	All.
1890	206	All.
1890	497	All.
1890	522	All.
1890	553	All.
1890	556	All.
1891	163	All.
1891	211	All.
1891	218	All.
1892	196	All.
1892	202	1.
1892	266	All.
1892	347	All.
1892	399	All.
1892	463	All.
1892	477	All.
1892	529	All.
1892	565	All.
1892	661	All.
1892	668	All.
1892	713	All.
1892	714	All.
1893	199	All.
1893	498	All.
1893	525	All.
1893	704	All.
1893	711	All.
1894	196	All.
1894	312	All.

L. 1896, ch. 908. Ch. 24, G. L.

LAWS OF —	Chapter.	Sections.
1894	562	All.
1894	713	All.
1895	378	All.
1895	418	All.
1895	425	All.
1895	515	All.
1895	556	All.
1895	558	All.
1895	608	All.
1895	895	All.
Fisheries, Game and Forest Law		274.

STATE CHARITIES LAW,

As amended to the commencement of the session of 1897.

L. 1896, ch. 546 — An act relating to state charities, constituting chapter twenty-six of the general laws.

[Became a law May 12, 1896, taking effect October 1, 1896.]

CHAPTER XXVI OF THE GENERAL LAWS.

State Charities Law.

Article I. State board of charities. (§§ 1-18.)
II. State charities aid association. (§§ 30-32.)
III. Regulations of finances of state charitable institutions, reports to and accounts against municipalities. (§§ 40-47.)
IV. Syracuse state institution for feeble-minded children. (§§ 60-70.)
V. State custodial asylum for feeble-minded women. (§§ 80-83.)
VI. Rome state custodial asylum. (§§ 90-94.)
VII. The Craig colony for epileptics. (§§ 100-114.)
VIII. Institutions for juvenile delinquents. (§§ 120-130.)
IX. Houses of refuge and reformatories for women. (§§ 140-153.)
X. Thomas asylum for orphan and destitute Indian children. (§§ 160-165.)
XI. Laws repealed; when to take effect. (§§ 170-171.)

ARTICLE I.

State Board of Charities.

Section 1. Short title.
2. Definitions.
3. State board of charities.
4. Officers of the board.
5. Compensation and expenses of commissioners.
6. Meetings and effect of nonattendance.
7. Office room and supplies.
8. Official seal, certificates and subpoenas.
9. General powers and duties of board.

Section 10. Visitations, inspection and supervision of institutions.
11. Powers and duties of boards on visits and inspections.
12. Investigations of institutions.
13. Orders of board directed to institutions.
14. Correction of evils in administration of institutions.
15. Duties of the attorney-general and district attorney.
16. State, nonresident and alien poor.
17. Reports of state board of charities.
18. Institutions for the deaf and dumb and the blind.

Section 1. **Short title.**— This chapter shall be known as the state charities law.

§ 2. **Definitions.**— The term state charitable institutions, when used in this chapter, shall include all institutions of a charitable, eleemosynary, correctional or reformatory character, supported in whole or in part by the state, except institutions for the instruction of the deaf and dumb and the blind, and such institutions which, by section eleven, article eight of the constitution, are made subject to the visitation and inspection of the commission in lunacy or the prison commission, whether managed or controlled by the state or by private corporations, societies or associations.

§ 3. **State board of charities.**— There shall continue to be a state board of charities, composed of eleven members, who shall be appointed by the governor, by and with the advice and consent of the senate, one of whom shall be appointed from, and reside in each judicial district of the state, one additional member from the county of Kings, and two additional members from the county of New York, who shall respectively reside in such counties. They shall be known as commissioners of the state board of charities, and hold office for eight years. No commissioner shall qualify or enter upon the duties of his office, or remain therein, while he is a trustee, manager, director or other administrative officer of an institution subject to the visitation and inspection of such board. The commissioners in office at the time this chapter takes effect, shall continue in office for the terms for which they were respectively appointed.

§ 4. **Officers of the board.**— The board may elect a president, and vice-president from its own members, and shall appoint and

continue to have a secretary, and may appoint such other officers, inspectors and clerks as it may deem necessary or proper and fix their compensation, who shall respectively hold their office during the pleasure of the board.

§ 5. **Compensation and expenses of commissioners.**— The compensation of each commissioner, in recognition of the provisions of the constitution, is fixed at ten dollars for each day's attendance at meetings of the board or of any of its committees, not exceeding in any one year the sum of five hundred dollars. The expenses of each commissioner, necessarily incurred while engaged in the performance of the duties of his office; and his outlay for any assistance that may have been required in the performance of such duties, on the same being paid out and certified by the commissioner making the charge, shall be paid by the treasurer, on the warrant of the comptroller.

§ 6. **Meetings and effect of nonattendance.**— The board may adopt rules and orders, regulating the discharge of its functions and defining the duties of its officers. It shall, by rule, provide for holding stated and special meetings. Six members regularly convened shall constitute a quorum. The failure on the part of any commissioner to attend three consecutive meetings of the board during any calendar year, unless excused by a formal vote of the board, may be treated by the governor as a resignation by such nonattending commissioner and the governor may appoint his successor. The annual reports of the board shall give the names of commissioners present at each of its meetings.

§ 7. **Office room and supplies.**— The trustees of public buildings shall furnish and assign to such board, in the capitol, at Albany, suitably furnished rooms for its office and place of holding meetings, and the comptroller shall furnish it with all necessary journals, account books, blanks and stationery.

§ 8. **Official seal, certificates and subpoenas.**— The board shall cause a record to be kept of its proceedings by its secretary or other proper officer, and it shall have and use an official seal; and the records, its proceedings and copies of all papers and documents in its possession and custody may be authenticated in the usual form, under such seal and the signature of its president or secretary, and shall be received in evidence in the same manner and with like effect as deeds regularly acknowledged or proven; it may issue subpoenas, which, when authenticated by

its president and secretary, shall be obeyed and enforced in the same manner as obedience is enforced to an order or mandate made by a court of record.

§ 9. **General powers and duties of board.**— The state board of charities shall visit, inspect and maintain a general supervision of all institutions, societies or associations which are of a charitable, eleemosynary, correctional or reformatory character, whether state or municipal, incorporated or not incorporated, which are made subject to its supervision by the constitution or by law; and shall,

1. Aid in securing the just, humane and economic administration of all institutions subject to its supervision.

2. Advise the officers of such institutions in the performance of their official duties.

3. Aid in securing the erection of suitable buildings for the accommodation of the inmates of such institutions aforesaid.

4. Approve or disapprove the organization and incorporation of all institutions of a charitable, eleemosynary, correctional or reformatory character which are or shall be subject to the supervision and inspection of the board.

5. Investigate the management of all institutions made subject to the supervision of the board, and the conduct and efficiency of the officers or persons charged with their management, and the care and relief of the inmates of such institution therein or in transit.

6. Aid in securing the best sanitary condition of the buildings and grounds of all such institutions, and advise measures for the protection and preservation of the health of the inmates.

7. Aid in securing the establishment and maintenance of such industrial, educational and moral training in institutions having the care of children as is best suited to the needs of the inmates.

8. Establish rules for the reception and retention of inmates of all institutions which, by section fourteen of article eight of the constitution, are subject to its supervision.

9. Investigate the condition of the poor seeking public aid and advise measures for their relief.

10. Administer the laws providing for the care, support and removal of state and alien poor and the support of Indian poor persons.

11. Collect statistical information in respect to the property, receipts and expenditures of all institutions, societies and associations subject to its supervision, and the number and condition of the inmates thereof, and of the poor receiving public relief.

§ 10. Visitation, inspection and supervision of institutions.—All institutions of a charitable, eleemosynary, reformatory or correctional character or design, including reformatories (except those now under the supervision and subject to the inspection of the prison commission), but including all reformatories, except those in which adult males convicted of felony, shall be confined, asylums and institutions for idiots and epileptics, alms-houses, orphan asylums, and all asylums, hospitals and institutions, whether state, county, municipal, incorporated or not incorporated, private or otherwise, except institutions for the custody, care and treatment of the insane, are subject to the visitation, inspection and supervision of the state board of charities, its members, officers and inspectors. Such institutions may be visited and inspected by such board, or any member, officer or inspector duly appointed by it for that purpose, at any and all times. Such board or any member thereof may take proofs and hear testimony relating to any matter before it, or before such member, upon any such visit or inspection. Any member of officer of such board, or inspector duly appointed by it, shall have full access to the grounds, buildings, books and papers relating to any such institution, and may require from the officers and persons in charge thereof, any information he may deem necessary in the discharge of his duties. The board may prepare regulations according to which, and provide blanks and forms upon which, such information shall be furnished, in a clear, uniform and prompt manner, for the use of the board. No such officer or inspector shall divulge or communicate to any person without the knowledge and consent of said board any facts or information obtained pursuant to the provisions of this act; on proof of such divulgement or communication such officer or inspector may at once be removed from office. The annual reports of each year shall give the results of such inquiries, with the opinion and conclusions of the board relating to the same. Any officer, superintendent or employe of any such institution, society or association who shall unlawfully

refuse to admit any member, officer or inspector of the board, for the purpose of visitation and inspection, or who shall refuse or neglect to furnish the information required by the board or any of its members, officers or inspectors, shall be guilty of a misdemeanor, and subject to a fine of one hundred dollars for each such refusal or neglect. The right and powers hereby conferred may be enforced by an order of the supreme court after notice and hearing, or by indictment by the grand jury of the county or both.

§ 11. **Powers and duties of board on visits and inspections.**— On such visits, inquiry shall be made to ascertain:

1. Whether all parts of the state are equally benefited by the institutions requiring state aid.

2. The merits of any and all requests on the part of any such institution for state aid, for any purpose, other than the usual expenses thereof; and the amount required to accomplish the object desired.

3. The sources of public moneys received for the benefit of such institution, as to the proper and economical expenditure of such moneys and the condition of the finances generally.

4. Whether the objects of the institution are being accomplished.

5. Whether the laws and the rules and regulations of this board, in relation to it, are fully complied with.

6. Its methods of industrial, educational and moral training, if any, and whether the same are best adapted to the needs of its inmates.

7. The methods of government and discipline of its inmates.

8. The qualifications and general conduct of its officers and employes.

9. The condition of its grounds, buildings and other property.

10. Any other matter connected with or pertaining to its usefulness and good management.

§ 12. **Investigations of institutions.**— The board may direct an investigation, by a committee of one or more of its members, of the affairs and management of any institution society or association, subject to its supervision, or of the conduct of its officers and employes. The commissioner or commissioners designated to make such investigation are hereby empowered to issue com-

pulsory process for the attendance of witnesses and the production of papers, to administer oaths, and to examine persons under oath, and to exercise the same powers in respect to such proceeding as belong to referees appointed by the supreme court.

§ 13. **Orders of board directed to institutions.**— If it shall appear, after such investigation, that inmates of the institution are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care, supervision, or other condition necessary to their comfort and well being, said board may issue an order, in the name of the people, and under its official seal, directed to the proper officers or managers of such institution, requiring them to modify such treatment or apply such remedy, or both, as shall therein be specified; before such order is issued, it must be approved by a justice of the supreme court, after such notice as he may prescribe and an opportunity to be heard, and any person to whom such an order is directed who shall willfully refuse to obey the same, shall, upon conviction, be adjudged guilty of a misdemeanor.

§ 14. **Correction of evils in administration of institutions.**— The state board of charities shall call the attention of the trustees, directors or managers of any such institution, society or association, subject to its supervision, to any abuses, defects or evils which may be found therein, and such officers shall take proper action thereon, with a view to correcting the same, in accordance with the advice of such board.

§ 15. **Duties of the attorney-general and district attorneys.**— If, in the opinion of the board or any three members thereof, any matter in regard to the management or affairs of any such institution, society or association, or any inmate or person in any way connected therewith, require legal investigation or action of any kind, notice thereof may be given by the board, or any three members thereof, to the attorney-general, and he shall thereupon make inquiry and take such proceedings in the premises as he may deem necessary and proper. It shall be the duty of the attorney-general and of every district attorney when so required to furnish such legal assistance, counsel or advice as the board may require in the discharge of its duties.

§ 16. **State, nonresident and alien poor.**—A poor person shall not be admitted as an inmate into a state institution for the feeble-minded, or epileptics, unless a resident of the state for

one year next preceding the application for his admission. The state board of charities, and any of its members or officers, may, at any time, visit and inspect any institution subject to its supervision to ascertain if any inmates supported therein at a state, county or municipal expense are state charges, nonresidents, or alien poor; and it may cause to be removed to the state or country from which he came any such nonresident or alien poor found in any such institution.

§ 17. Reports of state board of charities.— The state board of charities shall annually report to the legislature its acts, proceedings and conclusions for the preceding year, with results and recommendations, which report shall include the information obtained in its inquiries and investigations, and from the reports made to it as in this chapter provided, giving a complete and itemized statement of expenditures for state poor, and of such other matters relating to the institutions subject to its visitations, as it may deem necessary or proper. The board shall collect, and so far as it shall deem advantageous, embody in its annual reports, such information as it may deem proper relating to all institutions, subject to the visitation of the board and respecting the best manner of dealing with those who require assistance from the public funds, or who receive aid from private charity, and represent its views as to the best methods of caring for the poor and destitute children who may be distributed through the various institutions of the state, or who may be without instruction or guidance, and furnish in tabulated statements, as nearly as possible, the number, sex, age and nativity of persons in this state, and in the several counties thereof, who are in any way receiving the aid of public, private or organized charity, with any other particulars it may deem proper. And all officers of such institutions shall furnish such statistics on or before the first day of November, in each and every year for the preceding fiscal year, as may be required by said board; and every person refusing to do so, in violation of this section without reasonable excuse, shall be subject to a penalty of one hundred dollars, to be sued for in the name of the people by the attorney-general of the state, upon his receiving written notice from the state board of charities of such refusal. The annual reports of the board may, in its discretion,

present the designs and plans and the general estimates for buildings and improvements, which it may deem necessary for any state charitable institution, with the opinion of the board respecting any appropriation required as asked in behalf of such institution, other than for maintenance or ordinary purposes. The board may, in its discretion, and shall, when required by the governor, or either house of the legislature, make other and special reports.

§ 18. **Institutions for the deaf and dumb and the blind.**— Institutions for the deaf and dumb and the blind shall be subject to such visitation and inspection by the state board of charities as the constitution provides, but nothing in this article shall be deemed to take from the comptroller of the state any power which he now has to audit and supervise the expenditures made on account of the institutions for deaf-mutes and for the blind.

ARTICLE II.

State Charities' Aid Association.

Section 30. Visits by the state charities' aid association.
31. Duties of officers in charge of institutions; enforcement of orders.
32. Annual reports.

Section 30. **Visits by the state charities' aid association.**— Any justice of the supreme court, on written application of the state charities' aid association, through its president or other officer designated by its board of managers, may grant to such person as may be named in such application, orders to enable such persons, or any of them, as visitors of such association to visit, inspect and examine, in behalf of such association any of the public charitable institutions and state hospitals for the insane owned by the state, and the county, town and city poor-houses and almshouses within the state. The persons so appointed to visit, inspect and examine such institutions shall reside in the counties from which such institutions receive their inmates, and such appointments shall be made by a justice of the supreme court of the judicial district in which such visitors reside. Each order shall specify the institution to be visited, inspected and examined and the name of each person by whom such visitation, inspection and examination shall be made, and shall be in force for one year

from the date on which it shall have been granted, unless sooner revoked.

§ 31. **Duties of officers in charge of institutions; enforcement of orders.**— All persons in charge of any such institution shall admit each person named in any such order into every part of such institution, and render such person every possible facility to enable him to make in a thorough manner such visits, inspection and examination, which are hereby declared to be for a public purpose, and to be made with a view to public benefit. Obedience to the orders herein authorized shall be enforced in the same manner as obedience is enforced to an order or mandate by a court of record.

§ 32. **Annual reports.**— Such association shall make an annual report to the state board of charities upon matters relating to the institutions subject to the visitation of such board; and to the state commission in lunacy upon matters relating to the institutions subject to the inspection and control of such commission. Such reports shall be made on or before the first day of November for each preceding fiscal year.

ARTICLE III.

Regulation of Finances of State Charitable Institutions, and Reports to and Accounts Against Municipalities.

Section 40. Fiscal year.
41. Monthly estimates of expenses; contingent fund.
42. Monthly statements of receipts and expenditures.
43. Affidavit of steward; vouchers.
44. Purchases.
45. Reports to supervisors of appointments and committals to charitable institutions.
46. Reports by officers of certain institutions to clerks of boards of supervisors and cities.
47. Verified accounts against counties, cities and towns.

Section 40. **Fiscal year.**— The fiscal year of all state charitable institutions shall commence with the first day of October in each year, and close with the thirtieth day of September, next succeeding; and the annual reports of such institutions required by this chapter, shall be made for the fiscal year as herein named.

§ 41. Monthly estimates of expenses; contingent fund.— The superintendent or other managing officer of each of the state charitable institutions, and of the New York State School for the Blind at Batavia and the Northern New York Institution for Deaf-Mutes at Malone, shall, on or before the fifteenth day of each month, cause to be prepared duplicate estimates in minute detail, of the expenses required for the institution of which he has the supervision, for the ensuing month. He shall countersign and submit one of such duplicates to the comptroller, and retain the other to be placed on file in the office of the institution. The comptroller may cause such estimates to be revised either as to quantity and quality of supplies and the estimated cost thereof. Upon the revision and approval of such estimate, the comptroller shall authorize the boards of managers or other managing officers of such institutions to make drafts on him, as the money may be required for the purposes mentioned in such estimates, which drafts shall be paid on his warrant, out of the funds in the treasury of the state appropriated for the support of such charitable institutions. In every such estimate, there shall be a sum named, not to exceed two hundred and fifty dollars, as a contingent fund, for which no minute detailed statement need be made. No expenditure shall be made from such contingent fund, except in case of actual emergency, requiring immediate action, and which can not be deferred without loss or danger to the institution, or the inmates thereof. The treasurer of a state charitable institution shall not pay accounts for goods furnished, salaries of officers, or wages of employes, unless they are contained in the estimate provided in this section, and duly approved by the comptroller.

§ 42. Monthly statements of receipts and expenditures.— The treasurer of each state charitable institution shall on or before the fifteenth day of each month, make to the comptroller, a full and perfect statement of all the receipts and expenditures, specifying the several items, for the last preceding calendar month. Such statement shall be verified by the affidavit of the treasurer attached thereto, in the following form:

I, ..., treasurer of the ....., do solemnly swear that I have deposited in the bank designated by law for such purpose all the moneys received by me on

account of such ..... during the last month; and I do further swear that the foregoing is a true abstract of all the moneys received, and expenditures made by me or under my direction as such treasurer during the month ending on the ..... day of ..... 18...

§ 43. **Affidavit of steward; vouchers.**— There shall be attached to such treasurer's statement, the affidavit of the steward or other officer having like powers, to the effect that the goods and other articles therein specified were purchased and received by him or under his directions at the institution, that the goods were purchased at a fair cash market price and paid for in cash, and that he or any person in his behalf had no pecuniary or other interest in the articles purchased; that he received no pecuniary or other benefit therefrom in the way of commission, percentage, deductions or presents, or in any other manner whatever, directly or indirectly; that the articles contained in such bill were received at the institution; that they conformed in all respects to the invoiced goods received and ordered by him, both in quality and quantity. Such statement shall be accompanied by the voucher showing the payment of the several items contained in the statement, the amount of such payment and for what the payment was made. Such vouchers shall be examined by the comptroller and compared with the estimates made for the month for which the statement is rendered. If any voucher is found objectionable, the comptroller shall endorse his disapproval thereon, with the reason therefor, and return it to the treasurer, who shall present it to the board of managers for correction and immediately return it to the comptroller. All such vouchers shall be filed in the office of the comptroller.

§ 44. **Purchases.**— All purchases for the use of the state charitable institutions shall be made for cash and not on credit or time; every voucher shall be duly filled up at the time it is taken, and with every abstract of vouchers paid, there shall be proof on oath that the voucher was filled up and the money paid at the time it was taken. The board of managers shall make all needful rules and regulations to enforce the provisions of this section. No member or officer of the state board of charities or manager or officer of a state charitable institution shall be interested, directly or indirectly, in the furnishing of materials, labor or supplies for the use of any state charitable institution nor

shall any manager act as attorney or counsel for the board of managers thereof.

§ 45. **Reports to supervisors of appointments and committals to charitable institutions.**— Every judge, justice, superintendent or overseer of the poor, supervisor or other person who is authorized by law to make appointments or commitments to any state charitable institution, except almshouses, in which the board, instruction, care or clothing is a charge against any county, town or city, shall make a written report to the clerk of the board of supervisors of the county, or of the county in which any town is situated, or to the city clerk of any city, which are liable for any such board, instruction, care or clothing, within ten days after such appointment or commitment, and shall therein state, when known, the nationality, age, sex and residence of each person so appointed or committed and the length of time of such appointment or commitment.

§ 46. **Reports by officers of certain institutions to clerks of supervisors and cities.**— The keeper, superintendent, secretary, director or other proper officer of a state charitable institution to which any person is committed or appointed, whose board, care, instruction, tuition or clothing shall be chargeable to any city, town or county, shall make a written report to the clerk of such city or to the clerk of the board of supervisors of the county, or of the county in which such town is situated, within ten days after receiving such person therein. Such report shall state when such person was received into the institution, and, when known, the name, age, sex, nationality, residence, length of time of commitment or appointment, the name of the officer making the same, and the sum chargeable per week, month or year for such person. If any person so appointed or committed to any such institution shall die, be removed or discharged, such officers shall immediately report to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of the city from which such person was committed or appointed, the date of such death, removal or discharge.

§ 47. **Verified accounts against counties, cities and towns.**— The officers mentioned in the last section shall annually, on or before the fifteenth day of October, present to the clerk of the board of supervisors of the county, or of the county in which such

town is situated, or to the city clerk of a city from which any such person is committed and appointed, a verified report and statement of the account of such institution with such county, town or city, up to the first day of October, and in case of a claim for clothing, an itemized statement of the same; and if a part of the board, care, tuition or clothing has been paid by any person or persons, the account shall show what sum has been so paid; and the report shall show the name, age, sex, nationality and residence of each person mentioned in the account, the name of the officer who made the appointment or commitment, and the date and length of the same, and the time to which the account has been paid, and the amount claimed to such first day of October, the sum per week or per annum charged, and if no part of such account has been paid, the report shall show such fact. Any officer who shall refuse or neglect to make such report shall not be entitled to receive any compensation or pay for any services, salary or otherwise, from any town, city or county affected thereby. The clerk of the board of supervisors who shall receive any such report or account shall file and present the same to the board of supervisors of his county on the second day of the annual meeting of the board next after the receipt of the same.

ARTICLE IV.

Syracuse State Institutions for Feeble-Minded Children.

Section 60. Institution for idiots or feeble-minded children.
61. Powers and duties of boards of directors.
62. Salaries of officers.
63. Directors may hold donations in trust.
64. By-laws.
65. Duties of superintendent.
66. Duties of treasurer.
67. Semi-annual meeting and records of board of directors.
68. Manner of receiving pupils.
69. Discharge of state pupils and payment of expenses.
70. Expense of clothing state pupils.

Section 60. Institution for idiots or feeble-minded children.—The management of the Syracuse State Institution for Feeble-

Minded Children at Syracuse shall continue to be in a board of managers, which shall hereafter consist of the superintendent of public instruction and eight other persons, who shall continue to be appointed by the senate upon the recommendation of the governor, as often as vacancies shall occur therein, and shall hold office for eight years, and until their successors are severally appointed, subject to removal by the governor for cause, after an opportunity given them to be heard in their defense. The managers now in office shall hold their offices until the expiration of the term for which they were respectively appointed.

§ 61. **General powers and duties of boards of managers.**— Five members of the board shall constitute a quorum for the transaction of business. The board shall have the general direction and control of all the property and concerns of the institution, and shall take charge of its general interests and see that its general design is carried into effect, according to law and the by-laws, rules and regulations of the institution. It shall appoint a superintendent, who shall be a well-educated physician, and a treasurer, who shall reside in the city of Syracuse, and shall give an undertaking to the people of the state for the faithful performance of his trust, in such sum and with such sureties as the comptroller shall approve. Such board shall, annually, on or before the first day of February, report to the legislature the condition of the institution.

§ 62. **Salaries of officers.**— The board shall, from time to time, determine the annual salaries and allowances of the resident officers of the institution. Such salaries and allowances shall be paid monthly by the treasurer of the institution in the same manner as other claims against the institution.

§ 63. **Managers may hold donations in trust.**— The managers may take, and hold in trust for the state, any grant or devise of land, or any donation or bequest of money or other personal property, to be applied to the maintenance and education of feeble-minded children and the general use of the institution.

§ 64. **By-laws.**— The managers may establish by-laws regulating the appointment and duties of officers, teachers, attendants and assistants; fixing the conditions of admission, support and discharge of pupils; and for conducting in a proper manner the business of the institution; and ordain and enforce a suitable

system of rules and regulations for the internal government, discipline and management of the institution.

§ 65. Duties of superintendent.— The superintendent shall be the chief executive officer of the institution. He shall, subject to the provision of the board of managers and the by-laws and regulations established by them,

1. Have the general superintendence of the buildings, grounds and farm, with their furniture, fixtures and stock, and the direction and control of all persons employed in and about the same;

2. Appoint a steward, a medical assistant and a matron, who, with the superintendent, shall constantly reside in the institution or upon premises adjoining, and shall be termed the resident officers thereof;

3. Employ such teachers, attendants and assistants as he may think proper and necessary to economically and efficiently carry into effect the design of the institution; prescribe their several duties and places, fix their compensation, and discharge any of them;

4. Give, from time to time, such orders and instructions as he may deem best calculated to induce good conduct, fidelity and economy, in any department of labor and expense.

5. Maintain salutary discipline among all who are in the employ of the institution, and enforce strict compliance with his instructions, and uniform obedience to all the rules and regulations of the institution;

6. Cause full and fair accounts and records of all his doings, and of the entire business and operations of the institution, with the condition and prospects of the pupils to be kept regularly, from day to day, in books provided for the purpose;

7. See that such accounts and records shall be fully made up to the first days of April and October in each year, and that the principal effects and results, with his report thereon, be presented to the board at its semi-annual meetings;

8. Conduct the official correspondence of the institution and keep a record of the applications received, and the pupils admitted;

9. Prepare and present to the board at its annual meetings, when required, an inventory of all personal property and effects belonging to the institution;

10. Account, when required, for the careful keeping and economical use of all furniture, stores and other articles furnished for the institution.

11. Enter in a book to be provided and kept for that purpose, at the time of the admission of each pupil to the institution, a minute, with the date, name, residence of the pupil, and of the persons on whose application he is received; with a copy of the application, statement, certificate, and all other papers accompanying such pupil; the originals of which he shall file and carefully preserve.

§ 66. **Duties of treasurer.**— The treasurer shall,

1. Have the custody of all moneys, notes, mortgages and other securities and obligations belonging to the institution;

2. Keep a full and accurate account of all receipts and payments, as directed in the by-laws, and such other accounts as shall be required of him by the managers.

3. Balance all the accounts on his book on the first day of each October, and make a statement thereof, and an abstract of all the receipts and payments of the past year; and, within three days thereafter, deliver the same to the auditing committee of the managers, who shall compare the same with his books and vouchers, and verify the same by a further comparison with the books of the superintendent, and certify the correctness thereof to the managers at their annual meeting;

4. Render a quarterly statement of his receipts and payments to such auditing committee, who shall, in like manner as above, compare, verify, report and certify the result thereof to the managers at their annual meeting, who shall cause the same to be recorded in one of the books of the institution;

5. Render a further account of the state of his books and of the funds and other property in his custody, whenever required by the managers;

6. Receive for the use of the institution any and all sums of money which may be due upon any notes or bonds in his hands, belonging to the institution, any and all sums charged and due to the institution for the support of any pupil therein, or for actual disbursements made in his behalf for necessary clothing and traveling expenses;

7. Prosecute an action in his name as such treasurer, to recover any sum of money that may be due or owing to the institution;

8. Execute a release and satisfaction of a mortgage, judgment or other lien, in favor of the institution, when paid, so that the same may be discharged from record.

§ 67. Semi-annual meetings and records of board of managers. — The board of managers shall maintain an effective inspection of the affairs and management of the institution, for which purpose they shall meet at the institution twice in each year, at such times as the by-laws shall provide. The resident officers shall admit the managers into every part of the institution, and shall exhibit to them on demand the books, papers, accounts and writings belonging to the institution, and shall furnish copies, abstracts and reports whenever required by the managers. A committee of three managers to be appointed by the board at the annual meeting thereof, shall visit the institution once in every month, and perform such other duties and exercise such other powers as shall be prescribed in the by-laws, or the board may direct. The board shall keep in a bound book, to be provided for the purpose, a fair and full record of all its doings, which shall be open at all times to the inspection of its members, and all persons whom the governor and either house of the legislature may appoint to examine the same.

§ 68. Manner of receiving pupils.— There shall be received and gratuitously supported in the institution one hundred and twenty-feeble-minded children, as state pupils, who shall be selected from those whose parents or guardians are unable to provide for their support, in equal numbers as far as may be, from each judicial district. Such additional number of feeble-minded children as can be conveniently accommodated shall be received into the institution on such terms as shall be just. If the number of feeble-minded children admitted shall not equal the capacity of the institution, such additional number of nonteachable idiots may be admitted as can be conveniently accommodated. Feeble-minded children shall be received into the institution upon the written request of the person by whom they are sent, stating the name in full, age, place of nativity, if known, the town, city or county in which each resides, and whether such

child, his parents or guardian, are able to provide for his support, in whole or in part, and if in part only what part, the degree of relationship or other circumstances of connection between him and the person requesting his admission, which statement must be verified by the affidavit of two disinterested persons, residents of the same county as the child and acquainted with the facts and circumstances stated, and certified to be credible by the county judge of the county. Such judge must also further certify that such child is an eligible and proper candidate for admission to such institution. Feeble-minded children may also be received into such institution upon the official application of a county superintendent of the poor, or the commissioners of charity of a city of the state having such officers. In the admission of feeble-minded children, preference shall be given to poor or indigent children over all others, and to such as are able or have parents able to support them only in part, over those who are or who have parents who are able to wholly support such children.

§ 69. **Discharge of state pupils and payment of expenses.**— When the manager shall direct a state pupil to be discharged from the institution, the superintendent thereof may return him to the county from which he was sent, and deliver him to the keeper of the alms-house thereof, and the superintendent of the poor of the county shall audit and pay the actual and reasonable expenses of such return. If any town, county or person is legally liable for the support of such pupil, such expenses may be recovered by action in the name of the county by such superintendent of the poor. If the superintendent of the poor neglect or refuse to pay such expenses on demand, the treasurer of the institution may pay the same and charge the amount to the county; and the treasurer of the county shall pay the same with interest after thirty days, out of any funds in his hands not otherwise appropriated; and the supervisors shall raise the amount so paid as other county charges.

§ 70. **Expense of clothing state pupils.**— The supervisors of any county from which state pupils may have been received shall cause to be raised annually, while such pupils remain in the institution, the sum of thirty dollars for each pupil, for the purpose of furnishing suitable clothing, which shall be paid to the

treasurer of the institution on or before the first day of April. The superintendent may agree with the parent, guardian or committee of a feeble-minded child, or with any person, for the support, maintenance and clothing of such a child at the institution, upon such terms and conditions as may be prescribed, in the by-laws, or approved by the managers. Every parent, guardian, committee, or other person applying for the admission into the institution of a feeble-minded child who is able, or whose parents or guardians are of sufficient ability to provide for his maintenance therein, shall at the time of his admission, deliver to the superintendent an undertaking, with one or more sureties, to be approved by the managers, conditioned for the payment to the treasurer of the institution of the amount agreed to be paid for the support, maintenance and clothing of such feeble-minded child, and for the removal of such child from the institution without expense thereto, within twenty days after the service of the notice hereinafter provided. If such child, his parents or guardians are of sufficient ability to pay only a part of the expense of supporting and maintaining him, such undertaking shall be only for his removal from the institution as above mentioned; and the superintendent may take security by note or other written agreement, with or without sureties, as he may deem proper, for such part of such expenses as such child, his parents or guardians are able to pay, subject, however, to the approval of the managers in the manner that shall be prescribed in the by-laws. Notice to remove a pupil shall be in writing, signed by the superintendent and directed to the parents, guardians, committee or other person upon whose request the pupil was received at the institution, at the place of residence mentioned in such request, and deposited in the post-office at Syracuse with the postage prepaid. If the pupil shall not be removed from the institution within twenty days after service of such notice, according to the conditions of the agreement and undertaking, he may be removed and disposed of by the superintendent as herein provided, in relation to state pupils, and the provisions of this article respecting the payment and recovery of the expenses of the removal and disposition of a state pupil, shall be equally applicable to expenses incurred under this section.

ARTICLE V.

State Custodial Asylum for Feeble-Minded Women.

Section 80. Established as a corporation.
81. Board of managers.
82. Officers.
83. Treasurer to give undertaking.

Section 80. **Established as a corporation.**— The asylum established at Newark, Wayne county, for feeble-minded women is hereby continued as a body corporate and shall be known as the State Custodial Asylum for Feeble-Minded Women.

§ 81. **Board of managers.**— Such asylums shall continue to have a board of nine managers, three of whom shall be women, and shall be appointed by the governor, by and with the consent of the senate, for six years, except appointments to fill vacancies, which shall be for the unexpired term. The board of managers shall have the custody and control of all property and power to make all rules for the management and control of the effects of the asylum.

§ 82. **Officers.**— The board of managers shall appoint, of their number, a president, a secretary and a treasurer. They shall appoint a superintendent, a matron, and employ all assistants that may be necessary for the proper management of the asylum.

§ 83. **Treasurer to give undertaking.**— The treasurer shall, before he receives any money, give an undertaking to the people of the state, with such sureties and in such amount as the board of managers shall require and to be approved by the comptroller, to the effect that he faithfully perform his trust as such treasurer.

ARTICLE VI.

Rome State Custodial Asylum.

Section 90. Asylum for unteachable idiots.
91. Appointment of managers.
92. Powers and duties of managers.
93. Superintendent, qualifications, powers and duties.
94. Commitments to asylum, maintenance.

Section 90. Asylum for unteachable idiots.— The asylum established at Rome for the support, maintenance and custody of unteachable idiots is hereby continued and shall be known as the Rome State Custodial Asylum.

§ 91. Appointment of managers.— Such asylum shall be under the control and management of a board of eleven managers, appointed by the governor, by and with the advice and consent of the senate and whose term of office shall be six years. The managers now in office shall hold their offices until the expiration of the terms for which they were respectively appointed, or until their successors are appointed and have qualified. They may be removed by the governor, upon charges preferred against them in writing, after an opportunity given them to be heard thereon. They shall appoint one of their number as president and another as secretary.

§ 92. Powers and duties of managers.— The board of managers shall,

1. Have the general direction and control of all the property and concerns of the asylum, take charge of its general interests and see that its design is carried into effect, according to law, and its by-laws, rules and regulations.

2. Establish by-laws, rules and regulations, subject to the approval of the state board of charities, for the internal government, discipline and management of the asylum.

3. Maintain an effective inspection of the asylum for which purpose, a majority of the managers shall visit the asylum at least once in every three months, and at such other times as may be prescribed in the by-laws. The superintendent or other officer in charge shall admit such managers into every part of the asylum and its buildings and exhibit to them on demand all the books, accounts and writings belonging to the asylum and pertaining to its interest, and furnish copies, abstracts and reports whenever required by them.

4. Annually report to the legislature for the preceding fiscal year, the affairs and conditions of the asylum, with full and detailed estimates of the next appropriation required for maintenance and ordinary uses and repairs, and of special appropriations, if any, needed for extraordinary repairs, renewals, extensions, improvements, betterments or other necessary objects.

5. If lands are required for the use of the asylum, acquire the same by purchase, gift or condemnation.

§ 93. **Superintendent, qualifications, powers and duties.**— The superintendent shall be a resident of this state, a well educated physician and a graduate of an incorporated medical college, of at least five years actual experience in an institution for the cure and treatment of the insane. He shall be the chief executive officer of the asylum, and shall manage the institution in conformity to rules and regulations adopted by the board of managers. He shall appoint the assistant physicians, steward, clerk, a bookkeeper, matron and all subordinate employes and he may discharge them, when, in his judgment, it may be necessary to do so, for the good of the institution.

§ 94. **Commitments to asylum; maintenance.**— The superintendents of the poor of the various counties of the state, may commit to such asylum, if vacancies exist therein, such unteachable idiots residing in their respective counties, who are indigent or inmates of county alms-houses, according to the by-laws and regulations of the asylum. All commitments shall be in the form prescribed by the board of managers. Insane idiots or epileptics shall not be committed to such asylum. Unteachable idiots other than the poor and indigent may be admitted to the asylum, if vacancies exist, after providing for the care and custody of the poor and indigent idiots, at a rate which shall not exceed the weekly per capita cost of maintaining all inmates as determined yearly by the board of managers. The maintenance of the institution and the poor and indigent inmates thereof shall be a charge upon the state.

ARTICLE VII.

The Craig Colony for Epileptics.

Section 100. Establishment and objects of colony.
101. Managers of the colony.
102. Buildings and improvements.
103. Powers and duties of managers.
104. Annual report; state board of charities.
105. Donations in trust.
106. Officers of the colony.
107. Duties of the superintendent.

Section 108. Duties of treasurer.
109. Designation and admission of patients.
110. Support of state patients.
111. Apportionment of state patients.
112. The support of private patients.
113. Discharge of patients.
114. Notice of opening of colony.

Section 100. **Establishment and objects of colony.** — The colony for epileptics established at Sonyea, Livingston county, is hereby continued, and shall be known as the Craig Colony for Epileptics, in honor of the late Oscar Craig, of Rochester, New York, whose efficient and gratuitous public services in behalf of epileptics and other dependent unfortunates, the state desires to commemorate. The objects of such colony shall be to secure the humane, curative, scientific and economical care and treatment of epileptics, exclusive of insane epileptics.

§ 101. **Managers of the colony.** — There shall be a board of twelve managers of the Craig colony, all of whom shall be citizens of the state, appointed by the governor, by and with the advice and consent of the senate, one from each judicial district and one additional member from each of the fifth, sixth, seventh and eighth judicial districts. The term of office of each manager hereafter appointed to succeed a manager whose term has expired shall be three years, and the term of office of four of such managers shall expire annually. The managers in office when this chapter takes effect shall continue in office until the expiration of the term for which they were appointed and until their successors are appointed and have qualified. Appointments to fill vacancies occurring by death, removal or resignation, shall be made without unnecessary delay for the unexpired term. Failure of any manager to attend in each year the whole of two stated meetings of the board, shall be a sufficient cause for removal by the governor. Any manager may be removed by the governor upon written charges preferred against him, after an opportunity to be heard in his defense. The managers shall receive no compensation for their services, but shall be allowed their reasonable traveling and official expenses, to be paid as other charges against the institution.

§ 102. **Buildings and improvements.**— The board of managers shall put the premises conveyed to the state for the use of the colony into proper condition for the reception of patients and shall receive patients gradually and as rapidly as the condition of the colony will admit. They shall utilize all buildings and improvements on the land so conveyed, and construct such additional buildings and make further improvements upon plans adopted by them and approved by the state board of charities and for which appropriations are made by the legislature. There shall be provided for such colony an abundant supply of wholesome water, sufficient means for drainage and the disposal of sewage and a proper sanitary system. All of which shall be done under the direction of the board of managers in accordance with plans adopted by them, and approved by the state board of charities.

§ 103. **Powers and duties of managers.**— Six members of the board of managers shall constitute a quorum for the transaction of business. The board shall:

1. Elect from their number a president and secretary, and may adopt a seal for the use of the colony.

2. Have the government, direction and control of the patients, officers and employes of the colony and of all the property and concerns thereof.

3. Purchase supplies for the use of the colony and such raw materials as may be necessary for the trades and industries pursued therein, and provide for the disposal of the manufactured products and the product of the land.

4. Employ the assistants necessary for the government of the colony, and to educate and properly use the labor of the patients.

5. Establish such by-laws, rules and regulations as they may deem necessary regulating the appointment, powers and duties of officers, teachers, attendants and assistants, fixing the condition of admission, treatment, education, support and discharge of patients, conducting in a proper manner the business of the colony, and regulating the internal government, discipline and management of the colony.

6. Maintain an effective inspection of the affairs and management of the colony, for which purpose they shall meet at the institution at least four times in each year and at such other

times as the by-laws shall prescribe. Their annual meeting shall be held on the second Tuesday of October.

7. Appoint at its annual meeting, a committee of three managers, who shall visit the colony at least once in every month, and perform such other duties and exercise such other powers as are prescribed in the by-laws, or directed by the board.

8. Copy in a bound book, a fair and full record of all its proceedings, which shall be open at all times to the inspection of its members and officers of the state board of charities, and all persons whom the governor or either house of the legislature may appoint to examine the same.

§ 104. **Annual report; state board of charities.**— The board of managers of the Craig colony shall annually, on or before the first day of November, for the preceding fiscal year, report to the state board of charities the affairs and conditions of the colony, with full and detailed estimates of the next appropriation required for maintenance and ordinary uses and repairs, and of special appropriations, if any, needed for extraordinary repairs, renewals, extensions, improvement, betterments or other necessary objects, as also for the erection of additional buildings needed by reason of overcrowding, and in order to prevent the same, or to meet the need of sufficient accommodations for patients seeking admission to the colony; and the state board of charities shall, in its annual report to the legislature, certify what appropriations are, in its opinion, necessary and proper. The said colony shall be subject to the visitation and to the general powers of the state board of charities.

§ 105. **Donations in trust.**— The managers may take and hold in trust for the state any grant or devise of land, or any gift or bequest of money or other personal property, or any donation, to be applied, principal or income, or both, to the maintenance and education of epileptics and the general uses of the colony.

§ 106. **Officers of the colony.**— The board of managers shall appoint a superintendent of the colony, who shall be a well-educated physician and a graduate of a legally chartered medical college, with an experience of at least five years in the actual practice of his profession, and who shall be certified as qualified by the civil service commission, after a competitive examination; and a treasurer, who shall reside in the county of Livingston,

and shall give an undertaking to the people of the state for the faithful performance of his trust, in such sum and form and with such sureties as the comptroller shall approve. Such officers may be discharged or suspended at any time by such board, in its discretion. The superintendent shall constantly reside in the colony. The board shall determine the annual salaries and allowances of the superintendent, steward and matron, not exceeding, in addition to maintenance supplies, the following sums for salaries: Four thousand dollars to the superintendent; fifteen hundred dollars to the steward; one thousand dollars to the matron; and the board shall determine the annual salary of the treasurer of the colony, not exceeding fifteen hundred dollars. Such salaries and allowances shall be paid quarterly, on the first day of October, January, April and July, each year, by the treasurer of the colony, on presentation of bills therefor, audited, allowed and certified, as prescribed in the by-laws.

§ 107. Duties of the superintendent.— The superintendent shall be the chief executive officer of the colony, and subject to the supervision and control of the board of managers; he shall:

1. Oversee and secure the individual treatment and personal care of each and every patient of the colony while resident therein and the proper oversight of all the inhabitants thereof.

2. Have the general superintendence of the buildings, grounds and farm, with their furniture, fixtures and stock, and the direction and control of all persons employed in and about the same.

3. Give, from time to time, such orders and instructions as he may deem best calculated to induce good conduct, fidelity and economy in any department of labor or education or treatment of patients.

4. Appoint a steward and a matron and employ a bookkeeper and such teachers, assistants and attendants as he may think necessary to economically and efficiently carry into effect the design of the colony; prescribe their duties and places, and, subject to the approval of the board of managers, fix their compensation. The steward and matron shall reside in the colony.

5. Maintain salutary discipline among all employes, patients and inhabitants of the colony, and enforce strict compliance with his instructions and uniform obedience to all the rules and regulations of the colony.

6. Cause full and fair accounts and records of the entire business and operations of the colony, with the condition and prospects of the patients, to be kept regularly, from day to day, in books provided for that purpose.

7. See that such accounts and records shall be fully made up to the first days of January, April, July and October, in each year, and that the principal facts and results, with his report thereon, be presented to the board of managers at its quarterly meetings.

8. Conduct the official correspondence of the colony, and keep a record or copy of all letters written by himself and by his clerks and agents, and files of all letters received by him or them.

9. Prepare and present to the board, at its annual meeting, a true and perfect inventory of all the personal property and effects belonging to the colony, and account, when required by the board, for the careful keeping and economical use of all furniture, stores and other articles furnished for the colony.

10. Keep a record of all applications for admission of patients, and enter in a book to be provided and kept for that purpose, at the time of admission of each patient to the colony, a minute, with the date, name, residence of the patient, and of the persons on whose application he is received, with a copy of the application, statement, certificate, and all other papers received relating to such epileptic patient, the originals of which he shall file and carefully preserve, and certified copies whereof he shall forthwith transmit to the state board of charities.

§ 108. **Duties of treasurer.**— The treasurer, among his other duties, shall:

1. Have the custody of all moneys received on account of the monthly estimates made to the comptroller by the superintendent as provided by this chapter, and all other money, notes, mortgages and other securities and obligations belonging to the colony.

2. Keep a full and accurate account of all receipts and payments, in the form prescribed by the by-laws, and such other accounts as shall be required of him by the managers.

3. Balance all the accounts on his books on the first day of each October, and make a statement thereof, and an abstract of all the receipts and payments of the past year; and within five

and shall give an undertaking to the people of the state for the faithful performance of his trust, in such sum and form and with such sureties as the comptroller shall approve. Such officers may be discharged or suspended at any time by such board, in its discretion. The superintendent shall constantly reside in the colony. The board shall determine the annual salaries and allowances of the superintendent, steward and matron, not exceeding, in addition to maintenance supplies, the following sums for salaries: Four thousand dollars to the superintendent; fifteen hundred dollars to the steward; one thousand dollars to the matron; and the board shall determine the annual salary of the treasurer of the colony, not exceeding fifteen hundred dollars. Such salaries and allowances shall be paid quarterly, on the first day of October, January, April and July, each year, by the treasurer of the colony, on presentation of bills therefor, audited, allowed and certified, as prescribed in the by-laws.

§ 107. Duties of the superintendent.— The superintendent shall be the chief executive officer of the colony, and subject to the supervision and control of the board of managers; he shall:

1. Oversee and secure the individual treatment and personal care of each and every patient of the colony while resident therein and the proper oversight of all the inhabitants thereof.

2. Have the general superintendence of the buildings, grounds and farm, with their furniture, fixtures and stock, and the direction and control of all persons employed in and about the same.

3. Give, from time to time, such orders and instructions as he may deem best calculated to induce good conduct, fidelity and economy in any department of labor or education or treatment of patients.

4. Appoint a steward and a matron and employ a bookkeeper and such teachers, assistants and attendants as he may think necessary to economically and efficiently carry into effect the design of the colony; prescribe their duties and places, and, subject to the approval of the board of managers, fix their compensation. The steward and matron shall reside in the colony.

5. Maintain salutary discipline among all employes, patients and inhabitants of the colony, and enforce strict compliance with his instructions and uniform obedience to all the rules and regulations of the colony.

6. Cause full and fair accounts and records of the entire business and operations of the colony, with the condition and prospects of the patients, to be kept regularly, from day to day, in books provided for that purpose.

7. See that such accounts and records shall be fully made up to the first days of January, April, July and October, in each year, and that the principal facts and results, with his report thereon, be presented to the board of managers at its quarterly meetings.

8. Conduct the official correspondence of the colony, and keep a record or copy of all letters written by himself and by his clerks and agents, and files of all letters received by him or them.

9. Prepare and present to the board, at its annual meeting, a true and perfect inventory of all the personal property and effects belonging to the colony, and account, when required by the board, for the careful keeping and economical use of all furniture, stores and other articles furnished for the colony.

10. Keep a record of all applications for admission of patients, and enter in a book to be provided and kept for that purpose, at the time of admission of each patient to the colony, a minute, with the date, name, residence of the patient, and of the persons on whose application he is received, with a copy of the application, statement, certificate, and all other papers received relating to such epileptic patient, the originals of which he shall file and carefully preserve, and certified copies whereof he shall forthwith transmit to the state board of charities.

§ 108. **Duties of treasurer.**— The treasurer, among his other duties, shall:

1. Have the custody of all moneys received on account of the monthly estimates made to the comptroller by the superintendent as provided by this chapter, and all other money, notes, mortgages and other securities and obligations belonging to the colony.

2. Keep a full and accurate account of all receipts and payments, in the form prescribed by the by-laws, and such other accounts as shall be required of him by the managers.

3. Balance all the accounts on his books on the first day of each October, and make a statement thereof, and an abstract of all the receipts and payments of the past year; and within five

days thereafter deliver the same to the auditing committee of the managers, who shall compare the same with his books and vouchers, and verify the same by a comparison with the books of the superintendent, and certify the correctness thereof to the managers at their annual meeting.

4. Render a quarterly statement of his receipts and payments to such auditing committee who shall, in like manner as above, compare, verify, report and certify the result thereof, to the managers at their annual meeting, who shall cause the same to be recorded in one of the books of the colony.

5. Render a further account of the state of his books, and of the funds and other property in his custody, whenever required by the managers.

6. Receive for the use of the colony, money which may be paid upon obligation or securities in his hands belonging to the colony; and all sums paid to the colony for the support of any patient therein, or, for actual disbursements made in his behalf for necessary clothing and traveling expenses; and money paid to the colony from any other source.

7. Prosecute an action in the name of the colony to recover money due or owing to the colony, from any source; including the bringing of suit for breach of contract between private patients or their guardians and the managers of the colony.

8. Execute a lease and satisfaction of a mortgage, judgment, lien or other debt when paid.

9. Pay the salaries of the superintendent, treasurer, matron, steward, and of all employes of the colony, and the disbursements of the officers and members of the board as aforesaid. The treasurer shall have power to employ counsel, subject to the approval of the board of managers.

10. Deposit all moneys received for the care of private patients and all other revenues of the colony, in a bank designated by the comptroller, and transmit to the comptroller a statement showing the amount so received and deposited and from whom, and for what received, and the dates on which such deposits were made. Such statement of deposit shall be certified by the proper officer of the bank receiving such deposit or deposits. The treasurer shall verify by his affidavit that the sum so deposited is all the money received by him from any source of income for the

colony up to the time of the last deposit appearing on such statement. A bank designated by the comptroller to receive such deposits shall, before any such deposit be made, execute a bond to the people of the state in a sum and with sureties to be approved by the comptroller, for the safe keeping of such deposits.

§ 109. **Designation and admission of patients.**— There shall be received and gratuitously supported in the colony, epileptics residing in the state, who, if of age, are unable, or, if under age, whose parents or guardians are unable to provide for their support therein; and who shall be designated as state patients. Such additional number of epileptics as can be conveniently accommodated shall be received into the colony by the managers on such terms as shall be just, and shall be designated as private patients. Epileptic children shall be received into the colony only upon the written request of the persons desiring to send them, stating the name, age, place of nativity, if known, the town, city or county in which such children respectively reside, and the ability of their respective parents, or guardians or others to provide for their support in whole or in part, and if in part only, stating what part; and stating also the degree of relationship or other circumstances of connection between the patients and the persons requesting their admission; which statement in all cases of state patients must be verified by the affidavits of the petitioners and of two disinterested persons, and accompanied by the opinion of a qualified physician, all residents of the same county with the epileptic patient, and acquainted with the facts and circumstances stated, and who must be certified to be credible by the county judge or surrogate of the county; and such judge or surrogate must also certify, in each case, that such state patient, in his opinion, is an eligible and proper candidate for admission to the colony. State patients may also be received into the colony upon the official application of a county superintendent of the poor, or of the poor authorities of any city. It shall be the duty of the superintendent of the poor in every county and of the poor authorities of every city to furnish annually to the state board of charities, a list of all epileptics in their respective jurisdictions, so far as the same can be ascertained, with such particulars as to the condition of each epileptic as

shall be prescribed by the said state board. Whenever an epileptic shall become a charge for his or her maintenance on any of the towns, cities or counties of this state, it shall be the duty of all poor authorities of such city, and of the county superintendents of the poor, and of the supervisors of such county, to place such epileptic in the said colony. Any parent, guardian or friend of an epileptic child within this state may make application to the poor authorities of any city, or the superintendent of the poor of any county or the board of supervisors or any supervisor of any town, ward or city where such child resides, showing by satisfactory affidavit or other proof that the health, morals, comfort or welfare of such child may be endangered or not properly cared for if not placed in such colony; and thereupon it shall be the duty of such officer or board to whom such application may be made to place such child in said colony. The board of supervisors shall provide for the support of such patients, except those properly supported by the state, and may recover for the same from the parents or guardians of such children. In the admission of patients preference shall always be given to poor or indigent epileptics, or the epileptic children of poor or indigent persons, over all others; and preference shall always be given to such as are able to support themselves only in part, or who have parents able to support them only in part, over those who are able or who have parents who are able wholly to furnish such support.

§ 110. **Support of state patients.**— State patients shall be provided with proper board, lodging, medical treatment, care and tuition; and the managers of the colony shall receive for each state patient supported therein a sum not exceeding two hundred and fifty dollars per annum; which payments, if any, shall be made by the treasurer of the state, on the warrant of the comptroller, to the treasurer of the said colony, on his presenting the bill of the actual time and number of patients in the colony, signed and verified by the superintendent and treasurer of the colony and by the president and secretary of its board of managers. The supervisors of any county from which such patients may have been received into the colony shall cause to be raised annually while such patients remain in the colony, the sum of thirty dollars for each of such state patients for the purpose of

furnishing suitable clothing, and the same shall be paid to the treasurer of the colony on or before the first day of April of each year.

§ 111. Apportionment of state patients.—Whenever applications are made at one time for admission of more state patients than can be properly accommodated in the colony, the managers shall so apportion the number received, that each county may be represented in a ratio of its dependent epileptic population to the dependent epileptic population of the state, as shown by statistics furnished by the state board of charities.

§ 112. The support of private patients.— The superintendent of the colony may agree with any epileptic who may be of age, or his committee or guardian, or with the parents, guardian or committee, of any epileptic child, or with any person for the entire or partial support, maintenance, clothing, tuition, training, care and treatment of such epileptic in the colony, on such terms and conditions as may be prescribed in the by-laws or approved by the managers. Every patient, guardian, committee or other person applying for the admission into the colony of an epileptic who is, or whose parents or guardians are of sufficient ability to provide for his support and maintenance therein, shall at the time of his admission, execute a bond to the treasurer of the colony with one or more sureties, to be approved by the superintendent and treasurer, in such sum as the managers shall prescribe, to the effect that the obligors will pay to the treasurer of the colony all sums of money at such time or times as shall be so agreed upon, and remove such epileptic from the colony free of expense to the managers within twenty days after the service of the notice hereinafter provided for. If such epileptic, his parents or guardian are of sufficient ability to pay only a part of the expenses of supporting and maintaining him at the institution, such undertaking shall be only for such partial support and maintenance and for removal from the institution as above mentioned; and the treasurer may take security by such obligation or in his discretion by note or other written agreement, with or without sureties, as he may deem proper for such part of such expenses as the epileptic, his parents or guardians are able to pay; but such exercise of discretion shall be with the approval of the superintendent and a committee of the managers in a

manner that shall be prescribed in the by-laws. Notice to remove a patient shall be in writing, signed by the superintendent and directed to the epileptic, his parents, guardian, committee or other person upon whose request the patient was received at the colony, at the place of residence mentioned in such request, and deposited in the post-office at Sonyea or any post-office in Livingston county with the postage prepaid.

§ 113. Discharge of patients.— The superintendent of the colony, with the approval of the managers or of a committee thereof, shall have power to discharge patients, but no epileptic patient shall be returned to any poor-house, directly through a superintendent of the poor, or otherwise. In case a patient, not an epileptic, shall be sent to the colony, through mistaken diagnosis of his disease, or other cause, and there received, such patient shall be returned to and the traveling expenses of such return shall be paid by the person who sent him or her to the colony. Should an epileptic become insane, such patient, if a state patient, shall be sent to the state hospital of the district of which he was a resident just prior to his admission to the colony in the manner prescribed by law. The bills for the reasonable expenses incurred in the transportation of state patients to and from the state hospitals after they have been approved in writing by the state commission in lunacy, shall be paid by the treasurer of the state on the warrant of the comptroller from the funds provided for the support of the state hospitals. In case the relatives, guardians or friends of such an insane patient desire that he become an inmate of any state hospital situated beyond the limits of the district of which he was formerly a resident, and there be sufficient accommodations in such state hospital, he shall be received there in the manner provided by law for the transfer of other insane persons. Private patients, who may become insane, shall be committed, as prescribed by law, subject to the regulations of the state commission in lunacy, to such institution for the insane as may be designated by the relatives, guardians or friends of such insane person, all traveling and other expenses of removal to be paid by them. After any patient has been delivered to the managers or officers of such hospital or institution, the care and custody of the managers of the colony over such insane

person shall cease; and after any patient shall, as aforesaid, be so certified to be insane as prescribed by law, such patient shall come under the supervision of the state commission in lunacy.

§ 114. Notice of opening of colony.— So soon as the colony shall be ready for the reception of patients, it shall be the duty of the board of managers officially to send notice of such fact to the county clerks and the clerks of the boards of supervisors of the respective counties of the state, and the secretary of the state board of charities; and to furnish such clerks of counties and boards of supervisors with suitable blanks for the commitment of epileptics to such colony.

ARTICLE VIII.

Institutions for Juvenile Delinquents.

Section 120. State industrial school; managers.
121. Managers of House of Refuge for Juvenile Delinquents in New York city.
122. Powers and duties of managers.
123. Superintendent.
124. Commitment of children.
125. Register.
126. Discipline and control of inmates.
127. Military drill.
128. Transfer of inmates to penitentiary or Elmira Reformatory.
129. Confinement of juvenile delinquents under sentences by the courts of the United States.
130. Effects of alcoholic drinks and narcotics to be taught.

§ 120. State industrial school; managers— The State Industrial School, at Rochester, is hereby continued for the reception of all male and female children, under the age of sixteen years, who shall be legally committed to such school as vagrants or on a conviction for any criminal offense by any court having authority to make such commitment. Such school shall be under the control and management of a board of fifteen managers appointed by the governor. Their term of office shall be three years, and they shall be so appointed that the terms of one-third shall expire on the first Tuesday of February in each year.

All vacancies shall be filled by the governor and the person appointed to fill a vacancy shall hold office for the remainder of the term of the person whom he succeeds. In the discretion of the governor, persons of either sex may be appointed as managers of such school. Such managers shall serve without compensation.

§ 121. **Managers of house of refuge for juvenile delinqents in New York city.**— The society for the reformation of juvenile delinquents in the city of New York shall continue to be a corporation by the name of "the managers of the Society for the Reformation of Juvenile Delinquents in the city of New York," with all the powers conferred upon it by its act of incorporation and the acts amendatory thereof. There shall continue to be thirty managers of such society, each of whom shall hold office for the term of three years; and the managers in office when this chapter takes effect shall continue in office for the terms for which they were chosen respectively. The members of such society residing in the city of New York shall annually on the third Monday in November, by a plurality of votes, elect ten managers of such society. If a vacancy shall occur in the office of any manager, the board of managers may appoint a person to fill the vacancy for the remainder of the unexpired term.

§ 122. **Powers and duties of managers.**— The managers of such house of refuge, established by the society for the reformation of juvenile delinquents, in the city of New York, and of such state industrial school shall have the general control of such institutions and shall make all such rules, regulations, ordinances and by-laws for the government, discipline, employment, management and disposition of the officers thereof, and of the children while in such institution or in the care of such managers, as to them may appear just and proper. They shall appoint a superintendent and such other officers as they may deem necessary for the conduct and welfare of the institution under their charge. They shall report in detail annually to the legislature on or before the fifteenth day of January, the number of children received by them into the institution, the disposition thereof, their receipts and expenditures, their proceedings during the preceding year, and all other matters which they deem advisable to be brought to the attention of the legislature.

§ 123. Superintendent.— The superintendent so appointed shall be the chief executive officer of such school, or house of refuge, and subject to the by-laws, rules and regulations thereof and the powers of the board of managers, shall have control of the internal affairs and shall maintain discipline therein and enforce a compliance with, and obedience to, all rules, by-laws, regulations and ordinances adopted by such board for the government, discipline and management of such school or house of refuge. Under direction of such managers, he shall receive and take into such institution all children legally committed thereto by any court having authority to make such commitment.

§ 124. Commitment of children.— Children under the age of sixteen years may be committed from the rural counties of this state as vagrants, or on the conviction of any criminal offense by any court having authority to make such commitments, to the state industrial school or the house of refuge established by the society for the reformation of juvenile delinquents; but such children in the counties of New York and Kings shall be committed to the house of refuge in New York city, established by such society. But no child under the age of twelve years shall be committed or sentenced to either of such institutions for any crime or offense less than felony. The courts of criminal jurisdiction in the several counties shall ascertain by such proof as may be in their power, the age of every delinquent committed to either of such institutions, and insert such age in the order of commitment and the age thus ascertained shall be deemed and taken to be the true age of such delinquent. If the court shall omit to insert in the order of commitment, the age of any delinquent committed to such school or house of refuge the managers shall as soon as may be after such delinquent shall be received by them, ascertain his age by the best means in their power, and cause the same to be entered in a book to be designated by them for that purpose, and the age of such delinquent thus ascertained shall be deemed and taken to be the true age of such delinquent.

§ 125. Register.— Upon the commitment of a delinquent to such industrial school or house of refuge, the superintendent thereof shall cause to be entered in the register kept for that purpose, the date of admission, name, sex, age, place of birth, nationality,

residence and such other facts as may be ascertained, relating to the origin, condition, peculiarity or inherited tendencies of such delinquent.

§ 126. Discipline and control of inmates.— The managers of the state industrial school shall receive and detain during minority, every delinquent committed thereto in pursuance of law, or to the western house of refuge for juvenile delinquents, or to the house of refuge for juvenile delinquents in western New York. The managers of the house of refuge for juvenile delinquents in the city of New York, may receive and detain during minority all delinquents committed thereto. The managers of each institution shall cause the children detained therein or under their care to be instructed in such branches of useful knowledge, and to be regularly and systematically employed in such lines of industry as shall be suitable to their years and capacities, and shall cause such children to be subjected to such discipline, as in the opinion of such board, is most likely to effect their reformation. The managers of each institution, with the consent of any child committed thereto, may bind out as an apprentice or servant, such child during the time they would be entitled to retain him or her, to such persons and at such places to learn such trade and employment as in their judgment will be for the future benefit and advantage of such child.

§ 127. Military drill.— The superintendent of the state industrial school, and the superintendent of the house of refuge, established by the society for the reformation of juvenile delinquents, with the approval of the respective boards of managers thereof, may institute and establish a system of rules and regulations for uniforming, equipping, officering, disciplining and drilling in military art, the male inmates of such institutions, and for the exercise and drill of such inmates according to the most approved tactics, such number of hours daily as such superintendent may deem advisable.

§ 128. Transfer of inmates to penitentiary or Elmira reformatory.— If a delinquent confined in the state industrial school or the house of refuge established by the society for the reformation of juvenile delinquents is guilty of attempting to set fire to any building belonging to either of such institutions, or to any combustible matter for the purpose of setting fire to any such build-

ing, or of openly resisting the lawful authority of an officer thereof, or of attempting to excite others to do so, or shall by gross or habitual misconduct exert a dangerous and pernicious influence over the other delinquents, the board of managers of the institution wherein such case arises shall submit a written statement of the facts to a justice of the supreme court, or, if the case arises within the state industrial school, to the county judge of the county of Monroe, and apply to him for an order authorizing a temporary confinement of such delinquent, in the Monroe county penitentiary, or if over sixteen years of age, in the Elmira reformatory; and if the case arises within the house or refuge, established by the society for the reformation of juvenile delinquents in the city of New York, in the county jail or penitentiary of the county of New York, or if the delinquent be over sixteen years of age, to the Eastern New York reformatory, when completed, and until then to the Elmira reformatory. Such judge shall forthwith inquire into the facts, and if it appear that the statement is substantially true, and that the ends desired to be accomplished by the institution wherein the case has arisen will be best promoted thereby, he shall make an order authorizing the confinement of such delinquent in such penitentiary, county jail or reformatory for the limited time expressed in the order, and the keeper or superintendent of such penitentiary, county jail or reformatory shall receive such delinquent and detain him during the time expressed in such order. At the expiration of the time limited by such order, or sooner, if the board of managers of either of such institutions shall direct, the superintendent or keeper of such reformatory, county jail or penitentiary shall return such delinquent to the custody of the superintendent of the institution from which such delinquent shall have been received.

§ 129. Confinement of juvenile delinquents under sentences by the courts of the United States.— The superintendents of the house of refuge, established by the society for the reformation of juvenile delinquents in the city of New York, and the state industrial school at Rochester, shall receive and safely keep in their respective institutions, subject to the regulations and discipline thereof, and the provisions of this article, any criminal under the age of sixteen years convicted of any offense against

the United States, under sentences of imprisonment by any court of the United States, sitting within this state, until such sentences be executed, or until such delinquent shall be discharged by due course of law, conditioned upon the United States supporting such delinquent and paying the expenses attendant upon the execution of such sentence.

§ 130. Effects of alcoholic drinks and narcotics to be taught.—The nature of alcoholic drinks and other narcotics and their effects on the human system shall be taught in the schools connected with such house of refuge established by the society for the reformation of juvenile delinquents in the city of New York and in the State Industrial school at Rochester, for not less than four lessons a week for ten or more weeks in each year. All pupils who can read shall study this subject from suitable text-books, but pupils unable to read shall be instructed in it orally by teachers using text-books adapted for such oral instruction as a guide and standard, and these text-books shall be graded to the capacities of the pupils pursuing such course of study.

ARTICLE IX.

Houses of Refuge and Reformatories for Women.

Section 140. Names and location of houses of refuge and reformatories for women.
141. Appointment of managers.
142. General powers and duties of managers
143. Appointment and removal of officers and employes; compensation.
144. General powers of superintendents.
145. Oaths and bonds.
146. Commitments; papers furnished by committing magistrates.
147. Return of females improperly committed.
148. Disposition of children of women so committed.
149. Conveyance of women committed.
150. Detentions and rearrests in case of escapes.
151. Employment of inmates.
152. Employment of counsel.
153. Board of managers of Bedford reformatory to notify county clerks of completion thereof.

§ 140. **Names and locations of houses of refuge and reformatories for women.**— The houses of correction for women located at Hudson and Albion are continued and shall be known respectively as the House of Refuge for Women at Hudson, and the Western House of Refuge for Women. The reformatory for women located at Bedford is also continued and shall be known as the New York State Reformatory for Women.

§ 141. **Appointment of managers.**— Each such institution shall be under the control of its present board of managers, until others are appointed. Such boards shall consist of six managers to be appointed by the governor, by and with the advice and consent of the senate. All such managers shall be residents of the state, two shall be women and one a physician who has practiced his profession for ten years. The terms of the managers hereafter appointed shall be six years, except that the managers appointed to fill vacancies shall hold office for the unexpired terms of the managers whom they succeed. The term of office of one of such managers shall expire each year. If in any such institution there be less than six managers in office when this act takes effect, the governor shall appoint additional managers to make up the number of six, who shall be so classified by him that the term of one manager shall expire each year. Where the term of office of a manager of any such institution expires at a time other than the last day of December in any year, the term of office of his successor is abridged so as to expire on the last day of December, preceding the time when such term would otherwise expire, and the term of office of each manager thereafter appointed shall begin on the first day of January. The governor may remove any manager, at any time, for cause, on giving to such manager a copy of the charges against him and an opportunity to be heard in his defense. Such managers shall receive no compensation for their time or service; but the actual expenses necessarily incurred by them in the performance of their official duties shall be paid in the same manner as other expenses of such institution. Nothing contained in this section shall abridge the term of any manager now in office.

§ 142. **General powers and duties of managers.**— Each board of managers shall have the general superintendence, management and control of the institution over which it is appointed;

of the grounds and buildings, officers and employes thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof, and may make such rules and regulations as may seem to them necessary for carrying out the purposes of such institutions.

§ 143. **Appointment and removal of officers and employes; compensation.**— The board of managers of each of such institutions shall appoint from among its members a president, secretary and treasurer, who shall hold office for such length of time as such board may determine. They shall appoint a female superintendent, who shall hold office during the pleasure of the board. Such boards of managers shall fix the compensation of the officers and employes of the institution under their charge.

§ 144. **General powers of superintendents.**— The superintendent of each such institution shall, subject to the direction and control of the board of managers thereof:

1. Have the general supervision and control of the grounds and buildings of the institution, the subordinate officers and employes and the inmates thereof, and of all matters relating to their government and discipline.

2. Make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the board of managers, as may seem to her proper or necessary for the government of such institution and its officers and employes; and for the employment, discipline and education of the inmates thereof.

3. Exercise such other powers and perform such other duties as the board of managers may prescribe. Such superintendent shall also have power to appoint and remove all subordinate female officers and employes, subject to the approval of the board.

§ 145. **Oaths and bonds.**— Each manager and superintendent of such institutions shall take the constitutional oath of office and execute a bond to the people of this state, in the sum of five thousand dollars, with sureties approved by the state comptroller, which shall be filed in the office of the comptroller. The manager appointed as treasurer of such institution shall give an additional bond for such amount as the comptroller may direct. The comptroller may require other officers of such institutions

to give a bond, if, in his opinion, the interests of the state demand it.

§ 146. **Commitments; papers furnished by committing magistrates.**—A female, between the ages of twelve and twenty-five years, convicted by any magistrate of petit larceny, habitual drunkenness, of being a common prostitute, of frequenting disorderly-houses or houses of prostitution, or of a misdemeanor, and who is not insane, nor mentally or physically incapable of being substantially benefited by the discipline of either of such institutions, may be sentenced and committed to the House of Refuge for Women, at Hudson, and such females between the ages of fifteen and thirty years, convicted of like offenses, may be sentenced and committed to the Western House of Refuge for Women, at Albion, or the New York State Reformatory for Women, at Bedford. The term of such sentence and commitment shall be five years, but such female may be sooner discharged therefrom by the board of managers. Such commitments to the House of Refuge for Women, at Hudson, until the New York State Reformatory for Women, at Bedford, is completed and ready for the reception of inmates shall be made from the first, second, third, fourth, fifth and sixth judicial districts; to the Western House of Refuge at Albion, from the seventh and eighth judicial districts. Upon the completion of the New York State Reformatory for Women, at Bedford, commitments thereto shall be made from the first judicial district and the county of Westchester. The board of managers of each such institution shall furnish the several county clerks of the state with suitable blanks for the commitment of women thereto. Such county clerks shall immediately notify the magistrates of their respective counties of the reception of such blanks and that upon application they will be furnished to them. The magistrate committing a female pursuant to this section shall immediately notify the superintendent of the institution to which the commitment is made of the conviction of such female, and shall cause a record to be kept of the name, age, birthplace, occupation, previous commitments, if any, and for what offenses; the last place of residence of such female, and the particulars of the offense for which she is committed. A copy of such record shall be transmitted, with the warrant of commitment, to the superintendent of such institution, who shall cause the facts stated therein, and such

other facts as may be directed by the board of managers, to be entered in a book of record. Such magistrate shall, before committing any such female, inquire into and determine the age of such female at the time of commitment, and her age as so determined shall be stated in the warrant. The statement of the age of such female in such warrant shall be conclusive evidence as to such age, in any action to recover damages for her detention or imprisonment under such warrant, and shall be presumptive evidence thereof in any other inquiry, action or proceeding relating to such detention or imprisonment.

§ 147. **Return of females improperly committed.**—Whenever it shall appear to the satisfaction of the board of managers of any such institution, that any person committed thereto is not of proper age to be so committed or is not properly committed, or is insane or mentally incapable of being materially benefited by the discipline of any such institution, such board of managers shall cause the return of such female to the county from which she was so committed. Such female shall be so returned in the custody of one of the persons employed by such boards of managers to convey to such institutions women committed thereto, who shall deliver her into the custody of the sheriff of the county from which she was committed. Such sheriff shall take such female before the magistrate making the commitment, or some other magistrate having equal jurisdiction in such county, to be by such magistrate resentenced for the offense for which she was committed to any such institution and dealt with in all respects as though she had not been so committed. The costs and expenses of the return of such female, necessarily incurred and paid by any such board of managers shall be a charge against the county from which such female was committed, to be paid by such county to such board of managers in the same manner as other county charges are collected.

§ 148. **Disposition of children of women so committed.**— If any woman committed to any such institution, at the time of such commitment is a mother of a nursing child in her care under one year of age, or is pregnant with child which shall be born after such commitment, such child may accompany its mother to and remain in such institution until it is two years of age and must then be removed therefrom. The board of managers of any such

institution may cause such child to be placed in any asylum for children in this state and pay for the care and maintenance of such child therein at a rate not to exceed two and one-half dollars a week, until the mother of such child shall have been discharged from such institution, or may commit such child to the care and custody of some relative or proper person willing to assume such care. If such woman, at the time of such commitment, shall be the mother of and have under her exclusive care a child more than one year of age, which might otherwise be left without proper care or guardianship, the magistrate committing such women shall cause such child to be committed to such asylum as may be provided by law for such purposes, or to the care and custody of some relative or proper person willing to assume such care.

[§ 148 is a re-enactment of sub. 3 of § 10 of L. 1881, chap. 187, which is repealed by this law. But that subdivision is amended by L. 1896, chap. 587, taking effect May 12, 1896, and as so amended is, by § 33 of the Statutory Construction Law, ante, p. 119, probably to be considered as enacted subsequent to § 148, ante. As amended, sub. 3 reads as follows:

3. In case any woman committed to said house of refuge shall at the time of such commitment be the mother of a nursing child in her care, under one year of age, or be pregnant with child, which shall be born after such commitment, such child may accompany its mother to, and remain in said house of refuge until such time as in the opinion of said board of managers such child can be properly removed therefrom, and suitably provided for elsewhere; and said board of managers shall in their discretion have power to cause such child or children to be placed in any asylum for children in this state and to pay for the care and maintenance of such child or children at the rate not to exceed two dollars and a half a week, until the mother of such child or children shall have been discharged as hereinbefore provided for, or to commit such child or child.en to the care and custody of some relative or proper person willing to assume such care. And in case such woman at the time of such commitment shall be the mother of, and have under her exclusive care, a child or children, more than one year of age, and which might otherwise be left without proper care or guardianship, it shall be the duty of such court or magistrate so committing said woman to cause such child or children to be committed to such asylum as may be provided by law for such purpose, or to the care and custody of some relative or proper person willing to assume such care. The board of managers may bind out any child, born at or brought by its mother to the house of refuge, if a male, for a period which shall not be beyond his twenty-first year, and if a female, for a period which shall not be beyond her eighteenth year, which shall have been abandoned by its mother for a period not less than six months, and

remaining in the house of refuge, to be a clerk, apprentice or servant, by an indenture in writing, which shall be signed by all the managers in the name of the board of managers, and shall be signed also by the person or persons to whom such child shall be so bound out, who shall, in such indenture, undertake to treat such child kindly, which binding shall be as effectual as if such child had bound himself or herself with the consent of his or her father or mother.]

§ 149. **Conveyance of women committed.**— The board of managers of each of such institutions shall employ suitable persons to be known as marshals, to convey from the place of conviction to such institution, all women legally committed thereto, and such marshals shall have the power and authority of deputy sheriffs in respect thereto. All expenses necessarily incurred in making such conveyance shall be paid by the treasurer of the board of managers. In case of the commitment of a woman, who, at the time thereof, is the mother of a nursing child or is pregnant, the board of managers shall designate a woman of suitable age and character to accompany the person so committed, along with the officer or representative, authorized in this section to be employed by such managers.

§ 150. **Detentions and rearrests in case of escapes.**— The board of managers of any such institution may detain therein, under the rules and regulations adopted by them, any female legally committed thereto, according to the terms of the sentence and commitment, and conditionally discharge such female at any time prior to the expiration of the term of commitment. If an inmate escape or be conditionally discharged from any such institution, the board of managers may cause her to be rearrested and returned to such institution, to be detained therein for the unexpired portion of her term, dating from the time of her escape or conditional discharge. A person employed by the board of managers of any such institution to convey to such institution, women committed thereto, may arrest, without a warrant, an escaped inmate in any county in this state, and shall forthwith convey her to the institution from which she escaped; and a magistrate may cause an escaped inmate to be arrested and held in custody, until she can be removed to such institution, as in the case of her first commitment thereto. A person conditionally discharged from any such institution may be arrested and returned thereto, upon a warrant issued by its president and secretary. Such

warrant shall briefly state the reason for such arrest and return, and shall be directed and delivered to a person employed by such board of managers to convey to such institutions, women committed thereto, and may be executed by such person in any such county of this state.

§ 151. **Employment of inmates.**—The board of managers of each institution shall determine the kind of employment for women committed thereto and shall provide for their necessary custody and superintendence. The provisions for the safe keeping and employment of such women shall be made for the purpose of teaching such women a useful trade or profession and improving their mental and moral condition. Such board of managers may credit such women with a reasonable compensation for the labor performed by them, and may charge them with the necessary expenses of their maintenance and discipline, not exceeding the sum of two dollars per week. If any balance shall be found to be due such women at the expiration of their terms of commitment, such balance may be paid to them at the time of their discharge. To secure the safe keeping, obedience and good order of the women committed to any such institution, the superintendent thereof, has the same power as to such women, as keepers of jails and penitentiaries possess as to persons committed to their custody.

§ 152. **Clothing and money to be furnished discharged inmates.** — The board of managers of any such institution may, in their discretion, furnish to each inmate of such institution who shall be discharged therefrom, necessary clothing not exceeding twelve dollars in value, or if discharged between the first day of November and the first day of April to the value of not exceeding eighteen dollars, and ten dollars in money, and a ticket for the transportation of one person from such institution to the place of the conviction of such inmate, or to such other place as such inmate may designate, at no greater distance from such institution than the place of conviction.

§ 153. **Board of managers of Bedford reformatory to notify county clerks of completion thereof.**—As soon as the Bedford Reformatory for Women is completed and ready for the reception of inmates, the board of managers thereof shall notify the county clerks of Westchester and New York counties and furnish

such clerks with suitable blanks for the commitment of women to such institution. Such county clerks, on the reception of such notification, shall transmit a copy thereof to the several magistrates of such counties.

ARTICLE X.

Thomas Asylum for Orphan and Destitute Indian Children.

Section 160. Establishment of asylum.
161. Board of managers.
162. Powers and duties of the board.
163. Officers; salaries.
164. Superintendent, powers and duties.
165. Treasurer, powers and duties.

Section 160. **Establishment of asylum.**— The Thomas Asylum for Orphan and Destitute Indian Children, established on the Cattaraugus reservation in the county of Erie, is hereby continued. Such asylum may sue and be sued in the corporate name of "Thomas Asylum for Orphan and Destitute Indian Children," and service of process and papers may be made upon the superintendent or any manager of such asylum.

§ 161. **Board of managers.**— Such asylum shall be under the control and management of a board of managers, consisting of ten members, three of whom shall be Seneca Indians. Such managers and their successors shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold their office for six years, and until others are appointed in their stead, subject to removal for cause by the governor. If any manager fails, without being excused by vote of the board, for one year, to attend the regular meeting of the board of which he is a member, his office shall become vacant. A certificate of every such failure shall forthwith be transmitted by the board to the governor, and all vacancies caused by removal or expiration of office or otherwise shall be filled by the governor, by and with the consent of the senate.

§ 162. **Powers and duties of board of managers.**— The board of managers shall have the general direction and control of all the property and concerns of such asylum, not otherwise provided for by law. They may acquire and hold, in the name of and for

the people of the state of New York, property, by grant, gift, devise or bequest, except reservation lands, which may be held by those managers who are Seneca Indians, to be applied to the maintenance of orphan and destitute Indian children, and the general use of the asylum. They shall not receive any compensation for their services, but shall receive actual and necessary traveling expenses for attending the regular meetings of the board, as prescribed by the by-laws of said asylum. They shall:

1. Adopt, with the approval or consent of the state board of charities, by-laws for the regulation and management of said asylum, and regulating the appointment and duties of officers, assistants and employes of the asylum, and ordain and enforce a suitable system of rules and regulations for the internal government, discipline and management of the same.

2. Take care of the general interests of the asylum, and see that its design is carried into effect according to law, and its by-laws, rules and regulations. They shall, on application, receive destitute and orphan Indian children from any of the several reservations located within this state, and shall furnish them such care, moral training, and education, and such instruction in husbandry, and the arts of civilization as shall be prescribed by their by-laws, rules and regulations.

3. Keep in a book provided for that purpose, a fair and full record of their doings, which shall be open at all times to the inspection of the governor, the state board of charities or any person appointed to examine the same by the governor, the state board of charities, or either house of the legislature.

4. Maintain an effective inspection of the asylum, for which purpose a committee of the board, consisting of at least four members thereof, shall visit the asylum at least bi-monthly, and the whole board at least twice a year, and at such other times as may be prescribed by the by-laws.

5. Enter in a book kept by them for that purpose, the date of each visit, the condition of the asylum and the children therein, and its property, and all such managers present shall sign such entries.

6. Make, annually, on or before the fifteenth day of January, a report to the legislature of the condition of said asylum, in-

cluding a true account, in detail, of the receipts and disbursements of all moneys that shall come into their hands, or under their control, the number, age and sex of such destitute orphan children in said asylum, with the name of the reservation to which they belong, and the proportion of the year each has been maintained and instructed in said asylum, and such suggestions and recommendations as they may deem proper, or which may be required of them by the state board of charities.

§ 163. **Officers; salaries.**— Such board shall appoint for the asylum, as often as necessary, and for cause, after an opportunity to be heard, remove:

1. A superintendent, a matron, and a well-educated physician, who shall be a graduate of an incorporated medical college.

2. A treasurer, who shall give a bond to the people of the state for the faithful performance of his trust, with such sureties, and in such amount as the comptroller of the state shall approve. The superintendent, matron, and other assistants shall constantly reside in the asylum, or on the premises, and shall be designated the resident officers of the asylum. The physician shall visit said asylum at such times, and perform such duties as shall be prescribed by the by-laws, rules and regulations of the asylum. Such board shall also, from time to time, with the approval of the state board of charities, fix the annual salaries and allowances of such officers. Such salaries shall be paid in equal monthly installments by the treasurer on the warrant of the board of managers, countersigned by the superintendent thereof, and certified as correct.

§ 164. **Superintendent, powers and duties.**— The superintendent shall be the chief executive officer of such asylum, and in his absence or sickness, the matron shall perform the duties, and be subject to the responsibilities of the superintendent. Subject to the by-laws, rules and regulations established by the board of managers, such officer shall have the general superintendence of the buildings, grounds, and farm, together with their furniture, fixtures and stock, and shall:

1. Daily ascertain the condition of all the children and prescribe their conduct.

2. Appoint, with the approval of the board of managers, the other resident officers, assistants and employes not otherwise

provided for, that he may think necessary for the economical and efficient performance of the business of the asylum, and prescribe their duties, and he may discharge them at his discretion.

3. Cause full and fair accounts and records of all his doings, and of the entire business and operation of the asylum to be kept regularly, from day to day, in books provided for that purpose.

4. See that all such accounts and records are justly made up for the annual report to the legislature, as required by this act, and present the same to the board of managers, who shall incorporate them into their report to the legislature.

5. Keep in a book, in which he shall cause to be entered, at the time of the reception of any child, his name, age, residence, and the names of his parents (if any), to what reservation and tribe he belongs, and the date of such reception, and by whom brought, and the condition of the general health of such child.

§ 165. **Treasurer, powers and duties.**— The treasurer shall have the custody of all moneys, obligations and securities belonging to the asylum. He shall:

1. Open with some good and solvent bank, conveniently near the asylum, an account in his name as such treasurer, and deposit all moneys, upon receiving the same, therein, and draw from the same in the manner prescribed by the by-laws, specifying the object of payment.

2. Keep a full and accurate account of all receipts and payment in the manner directed by the by-laws, and such other accounts as the board of managers shall prescribe, render a statement to the board of managers whenever required by them.

ARTICLE XI.

Laws Repealed; When to Take Effect.

Section 170. Laws repealed.
171. When to take effect.

Section 170. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 171. **When to take effect.**— This chapter shall take effect on October first, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

LAWS OF—	Chapter.	Sections.
1846	143	All.
1850	24	All.
1851	502	All.
1852	387	All.
1853	159	All.
1853	608	All.
1855	163	All.
1861	306	All.
1862	220	All.
1867	739	All.
1867	951	All.
1873	571	All.
1875	228	All.
1878	72	All.
1879	109	All.
1881	187	All.
1885	281	All.
1886	539	All.
1888	404	All.
1890	238	All.
1891	51	All.
1891	216	All.
1891	375	All.
1892	637	All, except § 5.
1892	704	All.
1893	635	All.
1894	363	All.
1895	13	All.
1895	38	All, except § 9.
1895	59	All.
1895	253	All.
1895	439	All.
1895	771	All.

THE POOR LAW,

As amended to the commencement of the session of 1897.

L. 1896, ch. 225 — **An act in relation to the poor, constituting chapter twenty-seven of the general laws.**

[Became a law April 8, 1896, taking effect October 1, 1896.]

CHAPTER XXVII OF THE GENERAL LAWS.

The Poor Law.

Article I. County superintendents of the poor. (§§ 1–14.)
II. Overseers of the poor. (§§ 20–29.)
III. Settlement and place of relief of poor persons. (§§ 40–56.)
IV. Support of bastards. (§§ 60–75.)
V. Soldiers, sailors and marines. (§§ 80–84.)
VI. State poor. (§§ 90–104.)
VII. Duties of state board of charities; powers of state charities aid association. (§§ 115–121.)
VIII. Miscellaneous provisions. (§§ 130–147.)
IX. Laws repealed; when to take effect. (§§ 150–151.)

ARTICLE I.

County Superintendents of the Poor.

Section 1. Short title.
2. Definitions.
3. County superintendents of the poor.
4. Appointment of superintendent as keeper of alms-house.
5. When they may direct overseers of the poor to take charge of county poor.
6. Idiots and lunatics.
7. Pestilence in almshouse.
8. Accounts of county treasurer with towns.
9. Annual apportionment of town expenses.
10. Tax levy on towns.
11. Expense of county poor.
12. Superintendents' report to the state board of charities.
13. Supervisors may direct as to temporary or outdoor relief to poor.
14. Penalty for neglect or false report.

Section 1. Short title.— This chapter shall be known as the poor law.

§ 2. **Definitions.**—A poor person is one unable to maintain himself, and such person shall be maintained by the town, city, county or state, according to the provisions of this chapter. In counties having but one superintendent of the poor, the term "superintendent" or "superintendents of the poor," when used in this chapter, means such superintendent; and in towns or cities having but one overseer of the poor, the term "overseers" or "overseers of the poor," when used in this chapter, means a town or city overseer of the poor. An "alms-house" is a place where the poor are maintained at the public expense.

The town poor are such persons as are required by law to be relieved or supported at the expense of the town or city; the

county poor are such persons as are required by law to be relieved or supported at the expense of the county; and the state poor are such persons as are required by law to be relieved or supported at the expense of the state.

§ 3. **County superintendents of the poor.**— The county superintendents of the poor shall:

1. Have the general superintendence and care of poor persons who may be in their respective counties.

2. Provide and keep in repair suitable alms-houses when directed by the board of supervisors of their county.

3. Establish rules and by-laws for the government and good order of such alms-houses, and for the employment, relief, management and government of the poor therein; but such rules and regulations shall not be valid until approved by the county judge of the county, in writing.

4. Unless a keeper be appointed by the board of supervisors, employ suitable persons to be keepers of such houses, and physicians, matrons and all other necessary officers and servants, and vest such powers in them for the government of such houses, and the poor therein, as shall be necessary, reserving to such poor persons who may be placed under the care of such keepers, matrons, officers or servants, the right of appeal to the superintendents.

5. Purchase all necessary furniture, implements, food and materials for the maintenance of the poor in such houses, and for their employment in labor, and use, sell and dispose of the proceeds of such labor as they shall deem expedient.

6. Prescribe the rate of allowance to be made for bringing poor persons to the county alms-house, subject to such alterations as the board of supervisors may by general resolution make.

7. Authorize the keepers of such houses to certify the amount due for bringing such poor persons; which amount shall be paid by the county treasurer on the production of such certificate, countersigned and allowed by the county superintendents of the poor.

8. Summarily decide any dispute that shall arise concerning the settlement of any poor person, upon a hearing of the parties, and for that purpose may issue subpoenas to compel the attendance of witnesses, with the like powers to enforce such process, as is given to a justice of the peace in an action pending before him; their decisions shall be filed in the office of the county clerk

within thirty days after they are made, and shall be conclusive and final upon all parties interested, unless an appeal therefrom shall be taken, as provided in this chapter.

9. Direct the commencement of suits by any overseer of the poor who shall be entitled to prosecute for any penalties, or upon any recognizance, bonds, or securities taken for the indemnity of any town or of the county; and in case of the neglect of any such overseer, to commence and conduct such suits, without the authority of such overseer, in the name of such superintendents.

10. Draw on the county treasurer for all necessary expenses incurred in the discharge of their duties, which draft shall be paid by such treasurer out of the moneys placed in his hands for the support of the poor.

11. Audit and settle all accounts of overseers of the poor, justices of the peace, and all other persons, for services relating to the support, relief or transportation of the county poor; and draw on the county treasurer for the amount of the accounts which they shall so audit and settle.

12. Furnish necessary relief to such of the county poor as may require only temporary assistance, or are so disabled that they cannot be safely removed to the county alms-house, or to the county poor who can be properly provided for elsewhere than at the county alms-house at an expense not exceeding that of their support at such alms-house.

13. Render to the board of supervisors of their county, at their annual meeting, a verified account of all moneys received and expended by them, or under their direction, and of all their proceedings in such manner and form as may be required by the board.

14. Pay over all moneys remaining in their hands, within fifteen days after the expiration of their terms of office, to the county treasurer, or to their successors.

15. Administer oaths and take affidavits in all matters pertaining to their office, and elicit, by examination under oath, statements of facts from applicants for relief.

§ 4. **Appointment of superintendent as keeper of alms-house.**—The board of supervisors of any county may, by resolution, appoint as keeper of its county alms-house one of the superintendents of the poor of such county, who shall hold such office until the expiration of his term as superintendent or until the board of supervisors, by resolution, shall determine that he shall no

longer act in such capacity. The board of supervisors may fix the compensation such superintendent shall receive for acting as such keeper, and such compensation shall be a county charge. While a resolution of the board of supervisors directing such superintendent to act as keeper of the county alms-house is in force, the superintendents shall not employ a keeper thereof.

§ 5. **When they may direct overseers of the poor to take charge of county poor.**—Whenever the county superintendents take charge of the support of any county poor person, in counties where no alms-house is provided, they may authorize the overseers of the poor of the town in which such poor person may be, to continue to support him, on such terms and under such regulations as they shall prescribe; and thereafter no moneys shall be paid to such overseers for the support of such poor person, without the order of the superintendents; or the superintendents may remove such poor person to any other town, and there provide for his support, in such manner as they shall deem expedient.

§ 6. **Idiots and lunatics.**—The superintendents of the poor shall provide for the support of poor persons that may be idiots or lunatics, at other places than in the alms-house, in such manner as shall be provided by law for the care, support and maintenance of such poor persons.

§ 7. **Pestilence in alms-house.**—Whenever any pestilence of infectious or contagious disease shall exist in any county alms-house or in its vicinity, and the physician thereof shall certify that such pestilence or disease is likely to endanger the health of the persons supported thereat, the superintendents of the poor of such county shall cause the persons supported at such alms-house or any of them, to be removed to such other suitable place in the same county as shall be designated by the board of health of the city, town or village, within which such alms-house shall be, there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance, until they can be safely returned to the county alms-house from which they were taken, or otherwise discharged.

§ 8. **Accounts of county treasurer with towns.**— In counties where there are town poor, the county treasurer thereof shall open and keep an account with each town, in which the town shall be credited with all the moneys received from the same, or from its officers, and shall be charged with the moneys paid for

the support of its poor. If there be a county alms-house in such county, the superintendents of the poor shall, in each year, before the annual meeting of the board of supervisors, furnish to the county treasurer a statement of the sums charged by them as herein directed, to the several towns for the support of their poor, which shall be charged to such towns, respectively, by the county treasurer in his account.

§ 9. **Annual apportionment of town expenses.**— In counties having an alms-house, and where there are town poor, the superintendents shall annually, and during the week preceding the annual meeting of the board of supervisors, make out a statement of all the expenses incurred by them the preceding year for the support of town poor, and of the moneys received therefor, exhibiting the deficiency, if any, in the funds provided for defraying such expenses, and they shall apportion the deficiency among the several towns in proportion to the number and expenses of the town poor of such towns respectively, who shall have been provided for by the superintendents, and shall charge the towns with such proportion; which statement shall be by them delivered to the county treasurer.

§ 10. **Tax levy on towns.**— At the annual meeting of the board of supervisors, the county treasurer shall lay before them the account kept by him; and if it shall appear that there is a balance against any town, the board shall add the same to the amount of taxes to be levied and collected upon such town, with the other contingent expenses thereof, together with such sum for interest as will reimburse and satisfy any advances that may be made, or that may have been made, by the county treasurer for such town, which moneys, when collected, shall be paid to the county treasurer.

§ 11. **Expense of county poor.**— The superintendents of the poor shall annually present to the board of supervisors, at their annual meeting, an estimate of the sum which, in their opinion, will be necessary during the ensuing year for the support of the county poor; and such board of supervisors shall cause such sum as they may deem necessary for that purpose, to be assessed, levied and collected, in the same manner as other contingent expenses of the county, to be paid to the county treasurer and to be by him kept as a separate fund, distinct from the other funds of the county.

§ 12. **Superintendents' report to the state board of charities.**—The superintendents of the poor of every county shall, on or before the first day of December in each year, make reports covering the year ending September thirtieth, to the state board of charities in such form as the board shall direct, showing the number of the town poor and of the county poor that have been relieved or supported in their county the year preceding October first; the whole expense of such support, the amount paid for transportation of poor persons, and any other items not part of the actual expenses of maintaining the poor, and the allowance made to superintendents, overseers, justices, keepers, matrons, officers and other employes of the superintendents; the actual value of the labor of the poor persons maintained, and the estimated amount saved in the expense of their support in consequence of their labor; the sex and native country of every such poor person, with the causes, either direct or indirect, which have operated to render such persons poor, so far as the same can be ascertained; and shall include in such report a statement of the name and age of, and of the names and residence of the parents of, every poor child who has been placed by them in a family during the year, with the name and residence of the family with whom every such child was placed, and the occupation of the head of the family, together with such other items of information in respect to their character and condition as the state board of charities shall direct.

§ 13. **Supervisors may direct as to temporary or outdoor relief to poor.**—The board of supervisors of any county may make such rules and regulations as it may deem proper in regard to the manner of furnishing temporary or out-door relief to the poor of the several towns in said county by the overseers of the poor thereof, and also in regard to the amount such overseers of the poor may expend for the relief of each person or family, and after the board of supervisors of any county shall have made such rules and regulations, it shall not be necessary for the overseer of the poor of the towns in said county to procure an order from the supervisor of the town, or the sanction of the superintendent of the poor to expend over ten dollars for the relief of any person or family, unless the board of supervisors of such county shall so direct, but this section shall not apply to the counties of New York and Kings.

§ 14. **Penalty for neglect or false report.**— Any superintendent of the poor or other officer or person having been an officer, who shall neglect or refuse to render any account, statement or report required by this chapter, or shall willfully make any false report, or shall neglect to pay over any moneys within the time required by law, shall forfeit two hundred dollars to the town or county of which he is or was an officer, and shall be liable to an action for all moneys which shall be in his hands after the time the same should have been paid over, with interest thereon at the rate of ten per centum per annum from the time the same should have been paid over. The state board of charities shall give notice to the district attorney of the county of every neglect to make the report required to be made to that board, and every officer or board to whom any such account, statement, report or payment should have been made, shall give notice to such district attorney of every neglect or failure to make the same; and such district attorney shall, on receiving such notice or in any way receiving satisfactory evidence of such default, prosecute for the recovery of such penalties or moneys in the name of the town or county entitled thereto, and the sum recovered, if for the benefit of the town, shall be paid to the overseer of the poor thereof, and if for the benefit of the county, shall be paid into the county treasury, to be expended by the overseer or superintendent of the poor for the support of the poor of such town or county.

ARTICLE II.

Overseers of the Poor.

Section 20. Relief in counties having alms-house.
21. Expense of removal, and temporary relief.
22. How supported, and when discharged.
23. Temporary relief to persons who can not be removed to alms-house.
24. Relief in counties having no alms-house.
25. Overseer to make monthly examinations and audit accounts.
26. Overseers to keep books of account.
27. Annual report of overseers.
28. Accounts of town officers.
29. Overseers of the poor in cities.

§ 20. **Relief in counties having alms-house.**—When any person shall apply for relief to an overseer of the poor, in a county having an alms-house, such overseer shall inquire into the state and circumstances of the applicant; and if it shall appear that he is a poor person, and requires permanent relief and support, and can be safely removed, the overseer shall, by written order, cause such poor person to be removed to the county alms-house, or to be relieved and provided for, as the necessities of the applicant may require. If the county be one where the respective towns are required to support their own poor, the overseer shall designate in such order of removal, whether such person be chargeable to the county or not; and if no such designation be made, such person shall be deemed to belong to the town whose overseer made such order.

§ 21. **Expense of removal, and temporary relief.**—Unless such poor person is properly chargeable to the town, the overseer, in addition to the expense of such removal, shall be allowed such sum as may have been necessarily paid out, or contracted to be paid, for the relief or support of such poor person, previous to such removal and as the superintendent shall judge was reasonably expended while it was improper or inconvenient to remove such poor person, which sum shall be paid by the county treasurer, on the order of the superintendent.

§ 22. **How supported and when discharged.**—The person so removed shall be received by the superintendents, or their agents, and be supported and relieved in a county alms-house until it shall appear to them that such person is able to maintain himself, or, if a minor, until he is bound out or otherwise cared for, as hereinafter provided, when they may, in their discretion, discharge him.

§ 23. **Temporary relief to persons who can not be removed to alms-house.**—If it shall appear that the person so applying requires only temporary relief, or is sick, lame or otherwise disabled so that he can not be conveniently removed to the county alms-house, or that he is a person who should be relieved and cared for at his home under article five of this chapter, the overseers shall apply to the supervisor of the town, who shall examine into the facts and circumstances, and shall, in writing, order such sum to be expended for the temporary relief of such poor person, as the circumstances of the case shall require, which

order shall entitle the overseer to receive any sum he may have paid out or contracted to pay, within the amount therein specified, from the county treasurer, to be by him charged to the county, if such person be a county charge, if not, to be charged to the town where such relief was afforded; but no greater sum than ten dollars shall be expended or paid for the relief of any one poor person, or one family, without the sanction, in writing, of one of the superintendents of the poor of the county, which shall be presented to the county treasurer, with the order of the supervisor, except when the board of supervisors has made rules and regulations as prescribed in section thirteen of this chapter.

§ 24. **Relief in counties having no alms-house.** — If application for relief be made in any county where there is no county almshouse, the overseer of the poor of the town where such application is made shall inquire into the facts and circumstances of the case, and with the written approval of the supervisor of such town, make an order in writing for such allowance, weekly or otherwise, as they shall think required by the necessities of such poor person. If such poor person has a legal settlement in such town, or in any other town in the same county, the overseer shall apply the moneys so allowed to the relief and support of such poor person. The money so paid by him, or contracted to be paid, when the poor person had no legal settlement in the town, and charged to the town in which he had a legal settlement, shall be drawn by such overseer from the county treasurer on producing such order. If such person has no legal settlement in such county, the overseer shall, within ten days after granting to him any relief, give notice thereof, and that such person has no legal settlement in such county, to one of the county superintendents, and until the county superintendents shall take charge of the support of such poor person, the overseer shall provide for his relief and support, and the expense thereof from the time of giving such notice shall be paid to such overseer by the county treasurer, on the production of such order and of proof by affidavit of the time of the giving of such notice, and shall be by him charged to the county.

§ 25. **Overseer to make monthly examinations and audit accounts.**— The overseer of the poor of a town or city shall at least once each month, examine into the condition and necessities of each person supported by the town or city out of the county almshouse, and provide within the provisions of this chapter for such

allowances, weekly or otherwise as the circumstances may in his judgment require. All accounts for care, support, supplies or attendance, connected with the maintenance of such poor person or family, shall be settled, once in three months, and paid if there be funds for that purpose. No bill, claim or account for care, support, supplies or attendance, furnished to poor persons, by order of the overseer of the poor, or otherwise, shall be audited or allowed by the overseer, unless such bill, claim, or account be verified by the claimant, to the effect that such care, support, supplies or attendance have been actually furnished for such poor persons, that such poor persons have actually received the same, and that the prices charged therefor are reasonable and not above the usual market rates.

§ 26. Overseers to keep books of account. — Overseers of the poor, who receive and expend money for the relief and support of the poor in their respective towns and cities, shall keep books to be procured at town or city expense, in which they shall enter the name, age, sex and native country of every poor person who shall be relieved or supported by them, together with a statement of the causes, either direct or indirect, which shall have operated to render such relief necessary, so far as the same can be ascertained. They shall also enter upon such books a statement of the name and age, and of the names and residences of the parents of every child who is placed by them in a family, with the name and address of the family with whom every such child is placed, and the occupation of the head of the family. They shall also enter upon books so procured, a statement of all moneys received by them, when and from whom, and on what account received, and of all moneys paid out by them, when and to whom paid and on what authority, and whether to town, city or county poor; also a statement of all debts contracted by them as such overseers, the names of the persons with whom such debts were contracted, the amount and consideration of each item, the names of the persons for whose benefit the debts were contracted, and if the same have been paid, the time and manner of such payment.

The overseers shall lay such books before the board of town auditors, or the common council of the city, at its first annual meeting in each year, together with a just, true and verified itemized account, of all moneys received and expended by them for the use of the poor since the last preceding annual meeting of

said board. The board or council shall compare said account with the entries in the book, and shall examine the vouchers in support thereof, and may examine the overseers of the poor, under oath, with reference to such account. They shall thereupon audit and settle the same, and state the balance due to or from the overseers, as the case may be. Such account shall be filed with the town or city clerk, and at every annual town meeting. the town clerk shall produce such town account for the next preceding year, and read the same, if it be required by the meeting. The overseers of a town shall have such books present each year at the annual town meeting subject to the inspection of the voters of the town, and the entries thereon for the preceding year shall there be read publicly at the time reports of other town officers are presented, if required by a resolution of such meeting.

No credit shall be allowed to any overseers for money paid, unless it shall appear that such payments were made necessarily, or pursuant to a legal order.

§ 27. **Annual report of overseers.**— Such overseers shall make to the town board, at its second annual meeting in each year, a written report, stating their account as provided in the last section, continued to that date, and any deficiency that may then exist in the town poor fund, with their estimate of the sum which they shall deem necessary for the temporary and out-door relief and support of the poor in their town for the ensuing year, and in counties where there is no county alms-house, their estimate of such sum as they shall deem necessary to be raised and collected therein for the support of the poor for the ensuing year. If such board shall approve the statement and estimate so made or any part thereof, they shall so certify in duplicate, one of which certificates shall be filed in the office of the town clerk, and the other shall be laid by the supervisor of the town, before the board of supervisors of the county, on the first day of its next annual meeting. The board of supervisors shall cause the amount of such deficiency and estimates, as so certified, together with the sums voted by such town for the relief of the poor therein to be levied and collected in such town, in the same manner as other town charges, to be paid to the overseers of the poor of such town, and the warrants attached to the tax-rolls in such county shall direct accordingly. The moneys so raised shall be received by such overseers, and applied toward the payment of

such deficiency, and for the maintenance and support of the poor, for whose relief such estimates were made. The town board shall also, on or before the first day of December, annually certify to the county superintendents, the name, age, sex and native country, of every poor person relieved and supported by such overseers during the preceding year, with the causes which shall have operated to render them such poor persons the amount expended for the use of each person, as allowed by the board, and the amount allowed to each overseer for services rendered in relation to temporary or town relief.

The town board shall include in such annual statement to the county superintendents and the county superintendents shall include in their own report to the state board of charities a statement of the name and age, and of the names and residence of the parents of every child who has been placed by such overseers in a family during the preceding year, with the name and address of the family with whom each child is placed, and the occupation of the head of the family.

§ 28. **Accounts of town officers.**— The accounts of any town officer for personal or official services rendered by him, in relation to the town poor, shall be audited and settled by the town board and charged to such town. But no allowance for time or services shall be made to any officer for attending any board solely for the purpose of having his account audited or paid.

§ 29. **Overseers of the poor in cities.**— This chapter shall apply to overseers of the poor in cities, except where otherwise specially provided by law. In the absence of such special provision, overseers of the poor in each city shall make their report to the auditing board of such city, by whatever name known, at the beginning of the fiscal year of such city, if such time be fixed, otherwise on the first day of January in each year; the common councils of such cities as shall be liable for the support of their own poor shall yearly determine the sum of money to be appropriated for the ensuing year, and a certified copy of such determination shall be laid before the board of supervisors of the county, who shall cause the same to be assessed, levied, collected and paid to the county treasurer.

ARTICLE III.

Settlement and Place of Relief of Poor Persons.

Section 40. Settlements, how gained.
41. Qualification of last section.
42. Poor persons not to be removed, and how supported.
43. Proceedings to determine settlement.
44. Hearing before superintendents.
45. How to compel towns to support poor persons.
46. Proceedings to determine who are county poor.
47. In counties without alms-house.
48. Decisions to be entered and filed.
49. Appeal to the county court.
50. Penalty for removing.
51. Proceedings to compel support.
52. Liability, how contested.
53. Neglect to contest.
54. Actions, when and how to be brought.
55. Penalty for bringing foreign poor into this state.
56. Poor children under sixteen years of age.

Section 40. **Settlements, how gained.**— Every person of full age, who shall be a resident and inhabitant of any town or city for one year, and the members of his family who shall not have gained a separate settlement, shall be deemed settled in such town or city, and shall so remain until he shall have gained a like settlement in some other town or city in this state, or shall remove from this state and remain therefrom one year. A minor may be emancipated from his or her father or mother and gain a separate settlement:

1. If a male, by being married and residing one year separately from the family of his father or mother.

2. If a female, by being married and having lived with her husband; in which case the husband's settlement shall be deemed that of the wife.

3. By being bound as an apprentice and serving one year by virtue of such indentures.

4. By being hired and actually serving one year for wages, to be paid such minor.

§ 41. **Qualification of last section.** — A woman of full age, by marrying, shall acquire the settlement of her husband. Until a

poor person shall have gained a settlement in his or her own right, his or her settlement shall be deemed that of the father, if living, if not, then of the mother; but no child born in any alms-house shall gain any settlement merely by reason of the place of such birth; neither shall any child born while the mother is such poor person, gain any settlement by reason of the place of its birth. No residence of any such poor person in any alms-house, while such person, or any member of his or her family is supported or relieved at the expense of any other town, city, county or state, shall operate to give such poor person a settlement in the town where such actual residence may be.

§ 42. **Poor person not to be removed, and how supported.**— No person shall be removed as a poor person from any city or town to any other city or town of the same or any other county, nor from any county to any other county except as hereinafter provided; but every poor person, except the state poor, shall be supported in the town or county where he may be, as follows:

1. If he has gained a settlement in any town or city in such county, he shall be maintained by such town or city.

2. If he has not gained a settlement in any town or city in the county in which he shall become poor, sick or infirm, he shall be supported and relieved by the superintendents of the poor at the expense of the county.

3. If such person be in a county where the distinction between town and county poor is abolished, he shall, in like manner, be supported at the expense of the county, and in both cases, proceedings for his relief shall be had as herein provided.

4. If such poor person be in a county where the respective towns are liable to support their poor, and has gained a settlement in some town of the same county other than that in which he may then be, he shall be supported at the expense of the town or city where he may be, and the overseers shall, within ten days after the application for relief, give notice in writing to an overseer of the town to which he shall belong, requiring him to provide for the support and relief of such poor person.

§ 43. **Proceedings to determine settlement.**— If, within ten days after the service of such notice, the overseer to whom the same was directed, shall not proceed to contest the allegation of the settlement of such poor person, by giving the notice hereinafter directed, he or his successors, and the town which he or

they represent, shall be precluded from contesting or denying such settlement. He may, within the time mentioned, give written notice to the overseer of the town where such person may be, and from whom he has received the notice specified in the last section, that he will appear before the county superintendents, at a place and on a day therein to be specified, which day shall be at least ten days and not more than thirty days from the time of the service of such notice of hearing, to contest the alleged settlement. If the county superintendents fail to appear at the time and place so appointed, they shall, at the request of the overseers of either town appoint some place, and some other day, for the hearing of such allegations, and cause at least five days' notice thereof to be given to such overseers; and no poor person shall be deemed to have gained a settlement, when the proper notices to contest the settlement have been served, until there has been a hearing before the superintendent thereof, and an order by them made and filed in the office of the county clerk, fixing the settlement of such poor person.

§ 44. **Hearing before superintendents.**—The county superintendents shall convene whenever required by any overseer pursuant to such notice, and shall hear and determine the controversy, and may award costs, not exceeding fifteen dollars, to the prevailing party, which may be recovered in an action in a court of competent jurisdiction. Witnesses may be allowed fees as in courts of record. The decision of the superintendent shall be final and conclusive, unless an appeal therefrom shall be taken as provided by this chapter.

§ 45. **How to compel towns to support poor persons.**—The overseers of the poor of the town in which it may be alleged any poor person has gained a settlement, may, at any time after receiving such notice requiring them to provide for such person, take and receive such poor person to their town, and there support him; if they omit to do so, or shall fail to obtain the decision of the county superintendents, so as to exonerate them from the maintenance of such poor person, the charge of giving such notice, and the expense of maintaining such person, after being allowed by the county superintendents, shall be laid before the board of supervisors at their annual meetings from year to year, as long as such expenses shall be incurred, and the supervisors shall annually add the amount of such charges to the tax to be laid

upon the town to which such poor person belongs, together with such sum in addition thereto, as will pay the town incurring such expense, the interest thereon, from the time of expenditure to the time of repayment, which sum shall be assessed, levied and collected in the same manner as other charges of such town. Such moneys when collected shall be paid to the county treasurer and be by him credited to the account of the town which incurred the expenses.

§ 46. **Proceedings to determine who are county poor.**—The support of any poor person shall not be charged to the county, without the approval of the superintendents. If a poor person be sent to the county alms-house as a county poor person, the superintendents, in counties where there are town poor, shall immediately inquire into the facts, and if they are of opinion that such person has a legal settlement in any town of the county, they shall, within thirty days after such poor person shall have been received, give notice to the overseers of the poor of the town to which such poor person belongs that the expenses of such support will be charged to such town, unless the overseers within such time as the superintendents shall appoint, not less than twenty days thereafter, show that such town ought not to be so charged. On the application of the overseers, the superintendents shall re-examine the matter and take testimony in relation thereto, and decide the question; which decision shall be conclusive, unless an appeal therefrom shall be taken in the manner provided in this chapter.

§ 47. **In counties without alms-house.**— In counties having no alms-house, no person shall be supported as a county poor person, without the direction of at least one superintendent. In such cases the overseers of the poor, where such person may be, shall, within ten days after granting him relief, give notice thereof and that such person is not chargeable to their town, to one of the superintendents who shall inquire into the circumstances, and if satisfied that such poor person has not gained a legal settlement in any town of the county, and is not a state poor person, he shall give a certificate to that effect, and that such poor person is chargeable to the county. He shall report every such case to the board of superintendents at their next meeting, who shall affirm such certificate, or, on giving at least eight days' notice to the overseers of the poor of the town interested may annul the

same. After hearing the allegations and proofs in the premises, if the superintendent to whom the overseers have given such notice shall neglect or refuse to give such certificate, the overseers may apply to the board of superintendents, who shall summarily hear and determine the matter, and whose decision shall be conclusive, unless an appeal therefrom shall be taken in the manner provided in this chapter. Such appeal may also be taken from the refusal of one superintendent to grant such certificate when there is but one superintendent in the county.

§ 48. **Decisions to be entered and filed.**—The decisions of county superintendents in relation to the settlement of poor persons, or to their being a charge upon the county, shall be entered in books to be provided for that purpose, and certified by the signature of such of the superintendents as make the same; and a duplicate thereof, certified in the same manner, shall be filed in the office of the county clerk within thirty days after making such decision.

§ 49. **Appeal to the county court.**—Any or either of the parties interested in a decision of the superintendent of the poor, or in any dispute that shall arise concerning the settlement of any poor person, may appeal from such decision to the county court of the county in which such decision shall be made, by serving upon the other parties interested therein, within thirty days after service upon the appellant of a notice of the same, notice of appeal, which shall be signed by the appellant or his attorney, and which shall specify the grounds of the appeal. The hearing of such appeal may be brought on by either party in or out of term, upon notice of fourteen days. Upon such appeal a new trial of the matters in dispute shall be had in the county court without a jury, and a decision of the county court therein shall be final and conclusive, and the same costs shall be awarded as are allowed on appeals to said court.

For the purposes of this chapter the county court shall be deemed open at all times.

§ 50. **Penalty for removing.**—Any person who shall send, remove or entice to remove, or bring, or cause to be sent, removed or brought, any poor or indigent person, from any city, town or county, to any other city, town or county, without legal authority, and there leave such person for the purpose of avoiding the charge of such poor or indigent person upon the city, town or county

from which he is so sent, removed or brought or enticed to remove, shall forfeit fifty dollars, to be recovered by and in the name of the town, city or county to which such poor person shall be sent, brought or removed, or enticed to remove, and shall be guilty of a misdemeanor.

§ 51. **Proceedings to compel support.**—A poor person so removed, brought or enticed, or who shall of his own accord come or stray from one city, town or county into any other city, town or county not legally chargeable with his support, shall be maintained by the county superintendents of the county where he may be. They may give notice to either of the overseers of the poor of the town, or city from which he was brought or enticed, or came as aforesaid, if such town or city be liable for his support, and if there be no town or city in the county from which he was brought or enticed or came liable for his support, then to either of the county superintendents of the poor of such county, within ten days after acquiring knowledge of such improper removal, informing them of such improper removal, and requiring them forthwith to take charge of such poor person. If there be no overseers or superintendents of the poor in such town, city or county, such notice shall be given to the person, by whatever name known, who has charge and care of the poor in such locality.

§ 52. **Liability, how contested.**— The county superintendents, or overseers, or other persons to whom such notice may be directed may, after the service of such notice, take and remove such poor person to their county, town or city, and there support him, and pay the expense of such notice, and of the support of such person; or they shall, within thirty days after receiving such notice, by a written instrument under their hands, notify the county superintendents from whom such notice was received, or either of them, that they deny the allegation of such improper enticing or removal, or that their town, city or county is liable for the support of such poor person.

§ 53. **Neglect to contest.**— If there shall be a neglect to take and remove such poor person, and to serve notice of such denial within the time above prescribed, the county superintendents and overseers, respectively, whose duty it was so to do, their successors, and their respective counties, cities or towns, shall be deemed to have acquiesced in the allegations contained in such first notice, and shall be forever precluded from contesting the

same, and their counties, cities and towns, respectively, shall be liable for the expenses of the support of such poor person, which may be recovered from time to time, by county superintendents incurring such expenses, in the name of their county in actions against the county, city or town so liable.

§ 54. **Actions, when and how to be brought.**—Upon service of any such notice of denial, the county superintendents upon whom the same may be served, shall, within three months, commence an action in the name of their county, against the town, city or county so liable for the expenses incurred in the support of such poor person, and prosecute the same to effect; if they neglect to do so, their town, city or county, shall be precluded from all claim against the town, city or county to whose officers such first notice was directed.

§ 55. **Penalty for bringing foreign poor into this state.**—Any person who shall knowingly bring or remove, or cause to be brought or removed, any poor person from any place without this state, into any county, city or town within it, and there leave or attempt to leave such poor person, with intent to make any such county, city or town, or the state, wrongfully chargeable with his support, shall forfeit fifty dollars, to be recovered by an action in a court of competent jurisdiction in the county, and in the name of the county, city or town into which such poor person shall be brought, and shall be obliged to convey such person out of the state, or support him at his own expense, and shall be guilty of a misdemeanor, and the court or magistrate before whom any person shall be convicted for a violation of this section shall require of such person satisfactory security that he will within a reasonable time, to be named by the court or magistrate, transport such person out of the state, or indemnify the town, city or county for all charges and expenses which may be incurred in his support; and if such person shall refuse to give such security when so required, the court or magistrate shall commit him to the common jail of the county for a term not exceeding three months.

§ 56. **Poor children under sixteen years of age.**—No justice of the peace, board of charities, police justice, or other magistrate, or court, shall commit any child under sixteen years of age, as a vagrant, truant or disorderly person, to any jail or county almshouse, but to some reformatory, or other institution, as provided

for in the case of juvenile delinquents; and when such commitments are made, the justice of the peace, board of charities, police justice, or other magistrate or court making the same, shall immediately give notice to the superintendents of the poor or other authorities having charge of the poor of the county in which the commitment was made, giving the name and age of the person committed, to what institution, and the time for which committed; nor shall any county superintendents, overseers of the poor, board of charity, or other officer, send any child under the age of sixteen years, as a poor person, to any county almshouse, for support and care, or retain any such child in such alms-house, but shall provide for such child or children in families, orphan asylums, hospitals, or other appropriate institutions for the support and care of children as provided by law, except that a child under two years of age may be sent with its mother, who is a poor person, to any county alms-house, but not longer than until it is two years of age. The boards of supervisors of the several counties, and board of estimate and apportionment of the county of New York, and the appropriate board or body in the county of Kings shall take such action in the matter as may be necessary to carry out the provisions of this section. When any such child is committed to an orphan asylum or reformatory, it shall, when practicable, be committed to an asylum or reformatory that is governed or controlled by persons of the same religious faith as the parents of such child.

ARTICLE IV.

Support of Bastards.

Section 60. Penalty for removing mother of bastard; how supported after removal.
61. Mother and child poor persons; proceedings against county or town from which she was removed.
62. Mother and bastard; how to be supported.
63. Mother and child not to be removed without her consent.
64. Overseers to notify superintendents of cases of bastardy; when county chargeable.
65. Duty of superintendents to provide for mother and child.

Section 66. Until taken charge of by superintendents, to be supported by overseers.

67. Overseers of towns to support bastard and mother, whether chargeable or not.

68. Moneys received by overseers from parents of bastard how applied, and accounted for.

69. When moneys received on account of bastard chargeable to county, how to be disposed of.

70. Disputes concerning settlement of bastard, how determined.

71. Proceedings when bastard is chargeable to another town.

72. Mode of ascertaining sum to be allowed for support of bastard.

73. When mother and child to be removed to county alms-house.

74. Compromise with father of bastard; when mother may receive money.

75. Compromise with putative fathers in New York.

§ 60. **Penalty for removing mother of bastard; how supported after removal.**— If the mother of any bastard, or of any child likely to be born a bastard, shall be removed, brought or enticed into any county, city or town from any other county, city or town of this state, for the purpose of avoiding the charge of such bastard or child upon the county, city or town from which she shall have been brought or enticed to remove, the same penalties shall be imposed on every such person so bringing, removing or enticing such mother to remove, as are provided in the case of the fraudulent removal of a poor person. Such mother, if unable to support herself, shall be supported during her confinement and recovery therefrom, and her child shall be supported, by the county superintendents of the poor of the county where she shall be, if no provision be made by the father of such child.

§ 61. **Mother and child poor persons; proceedings against county or town from which she was removed.**— Such mother and her child shall, in all respects, be deemed poor persons; and the same proceedings may be had by the county superintendents to charge the town, city or county from which she was removed or enticed, for the expense of supporting her and her child, as

are provided in the case of poor persons fraudulently or clandestinely removed; and an action may be maintained in the same manner for said expenses and for all expenses properly incurred in apprehending the father of such child, or in seeking to compel its support by such father or its mother.

§ 62. **Mother and bastard; how to be supported.**— The mother of every bastard, who shall be unable to support herself, during her confinement and recovery therefrom, and every bastard, after it is born, shall be supported as other poor persons are required to be supported by the provisions of this chapter, at the expense of the city or town where such bastard shall be born, if the mother have a legal settlement in such city or town. and if it be required to support its own poor; if the mother have a settlement in any other city or town of the same county, which is required to support its own poor, then at the expense of such other city or town; in all other cases, they shall be supported at the expense of the county where such bastard shall be born.

§ 63. **Mother and child not to be removed without her consent.**— The mother and her child shall not be removed from any city or town to any other city or town in the same county, nor from one county to any other county, in any case whatever, unless voluntarily taken to the county, city or town liable for their support, by the county superintendents of such county or the overseers of the poor of such city or town.

§ 64. **Overseers to notify superintendents of cases of bastardy; when county chargeable.**— The overseers of the poor of any city or town where a woman shall be pregnant with a child, likely to be born a bastard, or where a bastard shall be born, which child or bastard shall be chargeable, or likely to become chargeable to the county, shall, immediately on receiving information of such fact, give notice thereof to the county superintendents, or one of them.

§ 65. **Duty of superintendents to provide for mother and child.**— The county superintendents shall provide for the support of such bastard and its mother, in the same manner as for the poor of such county.

§ 66. **Until taken charge of by superintendents, to be supported by overseers.**—Until the county superintendents take charge of and provide for the support of such bastard and its mother so chargeable to the county, the overseers of the poor of the city or

town shall maintain and provide for them; and for that purpose, the same proceedings shall be had as for the support of a poor person chargeable to the county, who cannot be conveniently removed to the county alms-house.

§ 67. **Overseers of towns to support bastard and mother, whether chargeable or not.**—Where a woman shall be pregnant with a child likely to be born a bastard, or to become chargeable to a city or town, or where a bastard shall be born chargeable, or likely to become chargeable to a city or town, the overseers of the poor of the city or town where such bastard shall be born, or likely to be born, whether the mother have a legal settlement therein or not, shall provide for the support of such child and the sustenance of its mother during her confinement and recovery therefrom, in the same manner as they are authorized by this chapter to provide for and support the poor of their city or town.

§ 68. **Moneys received by overseers from parents of bastard, how applied and accounted for.**—Where any money shall be paid to any overseer, pursuant to the order of any two justices, by any putative father, or by the mother of any bastard, the overseers may expend the same directly, in the support of such child, and the sustenance of its mother as aforesaid, without paying the same into the county treasury. They shall annually account, on oath, to the board of town auditors, or to the proper auditing board of a city, at the same time that other town or city officers are required to account for expenditures of all moneys so received by them, and shall pay over the balance in their hands, and under like penalties, as are provided by this chapter, in respect to the poor moneys in their hands.

§ 69. **When moneys received on account of bastard chargeable to county; how to be disposed of.**—All moneys which shall be ordered to be paid by the putative father, or by the mother of a bastard chargeable to any county, shall be collected for the benefit of such county; and all overseers of the poor, superintendents, sheriffs, and other officers, shall within fifteen days after the receipt of any such moneys, pay the same into the county treasury. Any officer neglecting to make such payment shall be liable to an action by and in the name of the county, for all moneys so received and withheld, with interest from the time of receipt, at the rate of ten per centum; and shall forfeit a sum

equal to that so withheld, to be sued for and recovered by and in the name of the county.

§ 70. **Disputes concerning settlement of bastard, how determined.**—When a dispute shall arise concerning the legal settlement of the mother of a bastard, or of a child born or likely to be born a bastard, in any city or town, the same shall be determined by the county superintendents of the poor, upon a hearing of the parties interested, in the same manner and with the same effect as they are authorized to determine the settlement of a poor person under this chapter.

§ 71. **Proceedings when bastard is chargeable to another town.**—When a bastard shall be born, or be likely to be born in a town or city, when the legal settlement of the mother is in another town or city of the same county, which is required by law to support its own poor, the overseers of the poor of the town or city where such bastard shall be born, or be likely to be born, shall give the like notice to the overseers of the town or city where the mother's settlement may be, as is required in the case of a person becoming a poor person, under the like circumstances, and the same proceedings shall be had, in all respects, to determine the liability of such town or city as in the case of poor persons.

The overseers of the town or city to which the mother of such bastard belongs may, before the confinement of such mother, or at any time after the expiration of two months after her delivery, if her situation will permit it, take and support such mother and her child.

If they omit to do so, and fail to obtain the determination of the county superintendents in their favor on the question of settlement, the town or city to which the mother belongs shall be liable to pay all the expenses of the support of such bastard, and of its mother during her confinement and recovery therefrom; which expenses, after being allowed by the county superintendents, shall be assessed, together with the lawful interest on the moneys expended, on the town or city to which such mother belongs, and shall be collected in the same manner as provided for poor persons supported under the same circumstances, and the moneys so collected, shall be paid to the county treasurer, for the benefit of, and to be credited to, the town which incurred such expenses.

§ 72. **Mode of ascertaining sum to be allowed for support of bastard.**—When any town is required to support a bastard, and

its mother, whether the mother have a settlement in such town or not, and no moneys shall be received from the putative father or from the mother, to defray the expense of such support, the overseers of the poor shall apply to the supervisor of the town and obtain an order for the support of such bastard, and the sustenance of its mother during her confinement and recovery therefrom, and the sum to be allowed therefor, in the same manner as is required in the case of poor persons, and the moneys paid or contracted to be paid by the overseer, pursuant to such order, shall be paid by the county treasurer in the same manner as for poor persons, and be charged to the town to whose officers such payment shall be made.

§ 73. **When mother and child to be removed to county alms-house.**—If there be a county alms-house in any county where the towns are required to support their own poor, the overseers of the poor of a town where a bastard shall be born, or shall be likely to be born, may, with the approval of the county superintendents or any two of them, and when the situation of the mother will allow it, remove the mother of such bastard, with her child, to such alms-house, in the same manner as poor persons may be removed; the expenses of which removal shall be defrayed in like manner, and such mother and her child shall be considered as poor of the town so liable for their support, and the expense shall in like manner be estimated and paid.

§ 74. **Compromise with father of bastard; when mother may receive money.**— Superintendents and overseers of the poor may make such compromise and arrangements with the putative father of any bastard child within their jurisdiction, relative to the support of such child, as they shall deem equitable and just, and thereupon discharge such putative father from all further liability for the support of such bastard.

Whenever a compromise is made with the putative father of a bastard child, the mother of such child, on giving security for the support of the child, and to indemnify the city and county or the town and county, from the maintenance of the child, to the satisfaction of the officers making the compromise, shall be entitled to receive the moneys paid by such putative father as the consideration of such compromise. If the mother of such child shall be unable to give the security, but shall be able and willing to nurse and take care of the child, she shall

be paid the same weekly allowance for nursing and taking care of the child, out of the moneys paid by the father on such compromise, as he shall have been liable to pay by the order of filiation; such weekly sum to be paid the mother, may be prescribed, regulated or reduced, as in the case of an order of filiation.

§ 75. **Compromise with putative fathers in New York.**—The commissioners of public charities of the city of New York, or any two of them, may make such compromise and arrangements with the putative fathers of bastard children in said city, relative to the support of such children, as they shall deem equitable and just, and thereupon may discharge such putative fathers from all further liability for the support of such bastards.

ARTICLE V.

Soldiers, Sailors and Marines.

Section 80. Relief to soldiers and their families.
81. Post to give notice that it assumes charge.
82. Poor or indigent soldiers, et cetera, without families.
83. Burial of soldiers, sailors or marines.
84. Headstones to be provided.

§ 80. **Relief to soldiers and their families.**—No poor or indigent soldier, sailor, or marine, who was in the military or naval service of the United States, in the late war of the rebellion or in the last war with Mexico, nor his family nor the families of any who may be deceased, shall be sent to any almshouse, except with the approval of the commander and quartermaster of the post of the Grand Army of the Republic of the city or town where such persons reside, or the nearest post thereto, but they shall be relieved and provided for at their homes in the city or town where they may reside, so far as practicable, provided such soldier, sailor or marine or the families of those deceased, are, and have been, residents of the state for one year; and all public officers having power to grant or allow relief to poor persons shall grant and allow all necessary relief to such soldiers, sailors and marines, and their families, and to the families of such as shall have died, whenever the necessity for such relief is known to exist; and they shall also grant such relief upon the written request of the commander and quartermaster of any post of the Grand Army of the Republic of the

city or town, made upon the written recommendation of the relief committee of such post; or if there be no post in a town or city in which it is necessary that such relief should be granted, upon the like request of the commander and quartermaster and recommendation of the relief committee of a Grand Army post located in the nearest town or city, to the town or city, requested to so furnish relief, and such written request and recommendation shall be sufficient authority for the expenditures so made.

§ 81. **Post to give notice that it assumes charge.**—The commander of any such post which shall undertake to supervise relief of poor veterans or their families, as herein provided, before his acts shall become operative in any town, city or county, shall file with the clerk of such town, city or county, a notice that such post intends to undertake such supervision of relief, which notice shall contain the names of the relief committee, commander, and other officers of the post; and also an undertaking to such city, town or county, with sufficient and satisfactory sureties for the faithful and honest discharge of his duties under this article; such undertaking to be approved by the treasurer of the city or county, or the supervisor of the town, from which such relief is to be received. Such commander shall annually thereafter, during the month of October, file a similar notice with said city or town clerk, with a detailed statement of the amount of relief requested by him during the preceding year, with the names of all persons for whom such relief shall have been requested, together with a brief statement in each case from the relief committee upon whose recommendation the relief was requested.

§ 82 **Poor or indigent soldiers, et cetera, without families.**—Poor or indigent soldiers, sailors or marines provided for in this article, who are not insane, and who have no families or friends with whom they may be domiciled, may be sent to a soldiers' home. Any poor or indigent soldier, sailor or marine provided for in this chapter, or any member of the family of any living or deceased soldier, sailor or marine, who may be insane, shall, upon recommendation of the commander and relief committee of such post of the Grand Army of the Republic, within the jurisdiction of which the case may occur, be sent to the proper state hospital for the insane.

§ 83. **Burial of soldiers, sailors or marines.**—The board of supervisors in each of the counties shall designate some proper person or authority, other than that designated for the care of poor persons, or the custody of criminals, who shall cause to be interred, the body of any honorably discharged soldier, sailor or marine, who served in the army or navy of the United States during the late war of the rebellion, or in the last war with Mexico, who shall hereafter die without leaving means sufficient to defray his funeral expenses, but such expenses shall in no case exceed thirty-five dollars. If the deceased has relatives or friends who desire to conduct the burial, but are unable or unwilling to pay the charges therefor, such sum shall be paid by the county treasurer upon due proof of the claim, and of the death and burial of the soldier, sailor or marine to the person so conducting such burial. Such interment shall not be made in a cemetery or cemetery plot used exclusively for the burial of poor persons deceased.

§ 84. **Headstones to be provided.**—The grave of any such deceased soldier, sailor or marine shall be marked by a headstone containing the name of the deceased, and, if possible, the organization to which he belonged, or in which he served; such headstone shall cost not more than fifteen dollars, and shall be of such design and material as shall be approved by the board of supervisors, and the expense of such burial and headstone as provided for in this article, shall be a charge upon, and shall be paid by the county in which the said soldier, sailor or marine shall have died; and the board of supervisors of such county is hereby authorized and directed to audit the account and pay the expense of such burial in the same manner as other accounts against said county are audited and paid; provided, however, that in case such deceased soldier, sailor or marine shall be at the time of his death an inmate of any State institution, including state hospitals and soldiers' homes, or any institution supported by the state and supported at public expense therein, the expense of such burials and headstones shall be a charge upon the county of his legal residence.

ARTICLE VI.

State Poor.

Section 90. Who are state poor, and how relieved.

91. Notice to be given to county clerks of location of state alms-house.

Section 92. State poor to be conveyed to state alms-houses.
93. Punishment for leaving alms-house.
94. Expenses for support.
95. Duties of keeper; superintendent of state and alien poor to keep record of names.
96. Visitation of alms-houses.
97. Insane poor.
98. Care of and binding out of state poor children.
99. Transfer to other states or countries.
100. Power of superintendent of state and alien poor.
101. Indian poor persons; removal to county alms-houses.
102. Contracts for support of Indian poor persons.
103. Expenses for support of Indian poor persons.
104. Duty of keepers; superintendent of state and alien poor to keep record.

§ 90. **Who are state poor, and how relieved.**— Any poor person who shall not have resided sixty days in any county in this state within one year preceding the time of an application by him for aid to any superintendent or overseer of the poor, or other officer charged with the support and relief of poor persons, shall be deemed to be a state poor person, and shall be maintained as in this article provided. The state board of charities shall, from time to time, on behalf of the state, contract for such time, and on such terms as it may deem proper, with the authorities of not more than fifteen counties or cities of this state, for the reception and support, in the alms-houses of such counties or cities respectively, of such poor persons as may be committed thereto. Such board may establish rules and regulations for the discipline, employment, treatment and care of such poor persons, and for their discharge. Every such contract shall be in writing, and filed in the office of such board. Such alms-houses, while used for the purposes of this article, shall be appropriately designated by such board and known as state alms-houses. Such board may, from time to time, direct the transfer of any such poor person from one alms-house to another, and may give notice from time to time to counties, to which alms-houses they shall send poor persons.

§ 91. **Notice to be given to county clerks of location of state alms-house.**—Such board shall give notice to the county clerks of the several counties of the location of each of such alms-

houses, who thereupon shall cause such notice to be duly promulgated to the superintendents and overseers of the poor, and other officers charged with the support and relief of poor persons in their respective counties. A circular from the superintendent of state and alien poor appointed by such board shall accompany such notice, giving all necessary information respecting the commitment, support and care of the state poor in such alms-houses, according to the provisions of this article.

§ 92. **State poor to be conveyed to state alms-house.**—County superintendents of the poor, or officers exercising like powers, on satisfactory proof being made that the person so applying for relief as a state poor person, as defined by this chapter, is such poor person, shall, by a warrant issued to any proper person or officer, cause such person, if not a child under sixteen years of age, to be conveyed to the nearest state alms-house, where he shall be maintained until duly discharged, but a child under two years of age may be sent with its mother, who is a state poor person, to such state alms-house, but not longer than until it is two years of age. All testimony taken in any such proceeding shall be forwarded, within five days thereafter, to the superintendent of state and alien poor, and a verified statement of the expenses incurred by the person in making such removal, shall be sent to such superintendent. Such board shall examine and audit the same, and allow the whole, or such parts thereof, as have been actually and necessarily incurred; provided that no allowance shall be made to any person for his time or service in making such removal. All such accounts for expense, when so audited and allowed, shall be paid by the state treasurer, on the warrant of the comptroller, to the person incurring the same.

§ 93. **Punishment for leaving alms-house.**—An inmate of a state alms-house, who shall leave the same without being duly discharged, and within one year thereafter is found in any city or town of this state soliciting public or private aid, shall be punished by confinement in the county jail of the county in which he is so found, or in any work-house of this state in such county, for a term not exceeding three months, by any court of competent jurisdiction; and it shall be the duty of every superintendent and overseer of the poor and other officers charged with the support and relief of poor persons, to cause, as far as may be, the provisions of this section to be enforced.

§ 94. **Expenses for support.**—The expenses for the support, treatment and care of all poor persons who shall be sent as state poor to such alms-houses, shall be paid quarterly, on the first day of January, April, July and October in each year, to the treasurer of the county, or proper city officers incuring the same, by the treasurer of the state, on the warrant of the comptroller; but no such expenses shall be paid to any county or city, until an account of the number of persons thus supported, and the time that each shall have been respectively maintained, shall have been rendered in due form and approved by the state board of charities.

§ 95. **Duty of keepers; superintendent of state and alien poor to keep record of names.** — The keeper or principal officer in charge of such alms-house shall enter the names of all persons received by him pursuant to this article, with such particulars in reference to each as the board, from time to time may prescribe, together with the name of the superintendent by whom the commitment was made, in a book to be kept for that purpose. Within three days after the admission of any such person, such keeper or principal officer shall transmit the name of such person, with the particulars hereinbefore mentioned, to the superintendent of state and alien poor; and notice of the death, discharge or absconding of any such person shall in like manner and within the time above named, be thus sent to such superintendent. Such superintendent shall cause the names of such persons in each such alms-house furnished as above provided for, to be entered in a book to be kept for that purpose in the office of such board, and he shall verify the correctness thereof by comparison with the books kept in such alms-house, and by personal examination of the several inmates thereof, and in any other manner the board may from time to time direct; and he shall furnish the board, in tabulated statements, on or before the second Tuesday in January, annually, the number of inmates maintained in each and all of such alms-houses during the preceding year, the number discharged, transferred to other institutions, bound out or removed from the state, and the number who died or left without permission during the year, with such other particulars and information as the board may require.

§ 96. **Visitation of alms-houses.**— The superintendent of state and alien poor shall visit and inspect each of such alms-houses,

at least once in each three months, and at such other times as he may deem expedient, or as the board may direct. And he shall also visit and inspect all alms-houses in which are Indians who are poor persons at least once a year. For the purposes of all such inspections, the superintendent shall possess all the powers of a member of the board and the further powers hereinafter mentioned. The officer in charge of each and every alms-house shall give to such superintendent free access to all parts of the ground, buildings, hospitals and other arrangements connected therewith, and to every inmate thereof, and extend to him the same facilities for the inspection of such alms-house and its inmates, as is required by law to be extended to such board of commissioners; and, in default thereof, such officer shall be subject to the same penalty as if access were denied to any member of the board. Such board shall also cause each of such alms-houses to be visited periodically by some of its members, who shall examine into their condition and management, respectively, and make such report thereof to the board as may be deemed proper.

§ 97. **Insane poor.**—If any inmate of any such alms-house becomes insane, such superintendent of state and alien poor shall cause his removal to the appropriate state hospital for the insane, and he shall be received by the officer in charge of such hospital, and be maintained therein until duly discharged.

§ 98. **Care and binding out of state poor children.**—Such superintendent of state and alien poor shall cause the state poor children, under sixteen years of age, unless committed with the mother as hereinbefore provided by this chapter, to be maintained and cared for at such orphan asylums in this state as he may deem proper; and the expenses thereof shall be paid by the state treasurer on the certificate of such superintendent and the warrant of the comptroller. Such superintendent, in his discretion, may bind out a state poor orphan or indigent child which may be committed to any such state alms-house, or placed in any orphan asylum, if a male child under twenty-one years, if a female under the age of eighteen, to be clerks, apprentices or servants until such child, if a male, be twenty-one years old, or if a female, shall be eighteen years old, which binding shall be as effectual as if such child had bound himself with the consent of his parents or other legal guardian.

§ 99. **Transfer to other states or countries.**— When any person becomes an inmate of any such alms-house, and expresses a preference to be sent to any state or country where he may have a legal settlement, or friends willing to support him or to aid in supporting him, the superintendent of state and alien poor may cause his removal to such state or country, provided, in the judgment of the superintendent, the interest of the state and the welfare of such poor person will be thereby promoted.

§ 100. **Powers of superintendent of state and alien poor.**— The superintendent of state and alien poor shall possess and exercise the like powers, and be subject to the like duties as to the state poor as superintendents of the poor exercise and are subject to in the care and support of county poor. In the absence or illness of the superintendent such powers and duties may be performed and discharged, by any person appointed by the state board of charities for such purpose.

§ 101. **Indian poor persons; removal to county alms-house.**— Every Indian residing within this state or upon any of the Indian reservations of this state, who is a poor person within the meaning of this chapter, shall be maintained as provided in this article. Upon application being made by such Indian poor person to the superintendent of the poor of the county where such Indian resides, or to any other officer charged with the support and relief of the poor, and on satisfactory proof being made that such Indian is a poor person as defined in this chapter, such superintendent or other officer shall by warrant, cause such Indian to be conveyed to the alms-house of the county where such Indian resides, where he shall be maintained at state expense. Immediately upon the removal of such Indian who is a poor person to such alms-house, all testimony taken and all facts relating thereto, together with a verified statement of the expenses incurred in making such removal, shall be transmitted to the state board of charities. Such board shall examine all matters relating thereto, and if satisfied that such removal was proper, and that the expenses thereof were actually and necessarily incurred, shall audit and allow the amount of such expenses, which when so audited and allowed shall be paid by the state treasurer, on the warrant of the comptroller, to the person incurring the same.

If, however, it shall appear to the satisfaction of such superintendent that the Indian poor person making application for

relief is in such physical condition as to make it improper to remove him to the almshouse, the superintendent may, subject to such rules and regulations as may be prescribed by the state board of charities, provide for the care and support of such Indian poor person, without removing him to the alms-house, and the expenses incurred in such care and support shall be paid by the state treasurer on the warrant of the comptroller, upon the order and allowance thereof by the state board of charities as in cases of support of Indian poor persons in alms-houses.

§ 102. **Contracts for support of Indian poor persons.**— The state board of charities, shall from time to time, on behalf of the state, contract with the proper officers of the county within which such Indians who are poor persons reside, on such terms and for such times as it may deem proper, for the reception and support in the alms-house of such counties of such Indians who are poor persons as may be committed thereto. Such board may establish rules and regulations for the discipline, treatment and care of such Indians and provide for their discharge. Every such contract shall be in writing and filed in the office of such board.

§ 103. **Expenses for support of Indian poor persons.**— The expenses for the support, treatment and care of all Indians who are poor persons and shall be sent to such county alms-house pursuant to this chapter, shall be paid quarterly on the first day of January, April, July and October in each year, to the treasurer of the county wherein such Indians are supported, by the state treasurer, on the warrant of the comptroller, but no such expenses shall be paid until an account of the number of Indians thus supported, and the time that each shall have been respectively maintained shall have been rendered in due form and approved by the state board of charities.

§ 104. **Duty of keepers; superintendent of state and alien poor to keep record.**— The keeper or principal officer in charge of such alms-house shall enter the names of all Indians committed thereto, with such particulars in relation thereto as the state board of charities may prescribe. Immediately upon the admission of any such Indian, such keeper or principal officer shall transmit by mail the names of such Indians, with the particulars hereinbefore mentioned, to the superintendent of state and alien poor; and notice of the death, discharge or absconding of any such Indian shall in like manner be transmitted to such

superintendent. Such superintendent shall cause the names of such Indians in such county alms-house to be entered in a book to be kept for that purpose in the office of such board, and he shall verify the correctness thereof by comparison with the books kept in the alms-house by personal examination of such Indians or in such other manner as the board may direct; and he shall furnish the board in tabulated statements, annually on or before the second Tuesday in January, the number of Indians maintained in all such county alms-houses during the preceding year, the number discharged, bound out, removed from the state, and the number who died or left without permission during the year, with such other information as the board may require.

ARTICLE VII.

Duties of State Board of Charities; Powers of State Charities Aid Association.

Section 115. Duties of State Board of Charities relating to the poor.
116. Visitation and inspection of alms-houses.
117. Investigations by board or committee; orders thereon.
118. Alms-house construction and administration.
119. Duties of the attorney-general and district attorneys.
120. State, nonresident and alien poor.
121. Visits by the State Charities Aid Association.

§ 115. **Duties of the State Board of Charities relating to the poor.**—The State Board of Charities shall:

1. Investigate the condition of the poor seeking public aid and devise measures for their relief.

2. Administer the laws providing for the care, support and removal of state and alien poor and the support of Indian poor persons.

3. Advise the officers of alms-houses in the performance of their official duties.

4. Collect statistical information in respect to the property, receipts and expenditures of all alms-houses, and the number and condition of the inmates thereof.

§ 116. **Visitation and inspection of alms-house.** - Any commissioner or officer of the State Board of Charities, or any inspector duly appointed by it for that purpose, may visit and inspect any alms-house in this state. On such visits inquiry shall be made to ascertain:

1. Whether the rules and regulations of the board, in respect to such alms-house, are fully complied with.

2. Its methods of industrial, educational and moral training, if any, and whether the same are best adapted to the needs of its inmates.

3. The condition of its finances generally.

4. The methods of government and discipline of its inmates.

5. The qualifications and general conduct of its officers and employes.

6. The condition of its grounds, buildings and other property.

7. Any other matter connected with, or pertinent to, its usefulness and good management.

Any commissioner or officer of the board, or inspector duly appointed by it, shall have free access to the grounds, buildings, books and papers relating to such alms-house, and may require from the officers and persons in charge, any information it may deem necessary. Such board may prepare regulations according to age, and provide blanks and forms upon which such information shall be furnished, in a clear uniform and prompt manner for the use of the board; any such officer or inspector who shall divulge or communicate to any person without the knowledge and consent of such board, any facts or information obtained in pursuance of the provisions of this chapter, shall be guilty of a misdemeanor, and shall at once be removed from office. The annual reports of each year shall give the results of such inquiry, with the opinion and conclusions of the board relating to the same. Any officer, superintendent or employe of any such alms-house who shall willfully refuse to admit any member, officer or inspector of the board, for the purpose of visitation and inspection, and who shall refuse or neglect to furnish the opinion required by the board, or any of its members, officers or inspectors, shall be guilty of a misdemeanor, and subject to a fine of one hundred dollars for each such refusal or neglect. The rights and powers hereby conferred may be enforced by an order of the supreme court after such notice as the court may prescribe, and

an opportunity to be heard thereon, or by indictment by the grand jury of the county, or both.

§ 117. **Investigations by board or committee; orders thereon.**—The board may, by order, direct an investigation by a committee of one or more of its members, of the officers and managers of any alms-house, or of the conduct of its officers and employes; and the commissioner or commissioners so designated to make such investigation may issue compulsory process for the attendance of witnesses and the production of books and papers, administer oaths, examine persons under oath, and exercise the same powers in respect to such proceeding as belong to referees appointed by the supreme court.

It it shall appear, after such investigation, that the inmates of the alms-house are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care and supervision, or other condition necessary to their comfort and well being, such board may issue an order in the name of the people, and under its official seal, directed to the proper officer of such alms-house, requiring him to modify such treatment or apply such remedy, or both, as shall therein be specified. Before such order is issued it must be approved by a justice of the supreme court, after such notice as he may prescribe, and an opportunity to be heard thereon, and any person to whom such an order is directed who shall willfully refuse to obey the same shall, upon conviction, be deemed guilty of a misdemeanor.

§ 118. **Alms-house construction and administration.**—No alms-house shall be built or reconstructed, in whole or in part, except on plans and designs approved in writing by the state board of charities. It shall be the duty of such board to call the attention, in writing or otherwise, of the board of supervisors and the superintendent of the poor, or other proper officer, in any county, of any abuses, defects or evils, which, on inspection, it may find in the alms-house of such county, or in the administration thereof, and such county officer shall take proper action thereon, with a view to proper remedies, in accordance with the advice of such board.

§ 119. **Duties of the attorney-general and district attorneys.**—If, in the opinion of the state board of charities, or any three members thereof, any matter in regard to the management or affairs of any such alms-house, or any inmate or person in any

way connected therewith, require legal investigation or action of any kind, notice thereof may be given by the board, or any three members thereof, to the attorney-general, who shall thereupon make inquiry and take such proceedings in the premises as he may deem necessary and proper. It shall be the duty of the attorney-general and of every district attorney when so required to furnish such legal assistance, counsel or advice as the board may require in the discharge of its duties under this chapter.

§ 120. **State, nonresident and alien poor.**—The state board of charities, and any of its members or officers, may, at any time, visit and inspect any alms-house to ascertain if any inmates are state charges, nonresidents, or alien poor; and it may cause to be removed to the state or country from which he came, any such nonresident or alien poor found in any such alms-house.

§ 121. **Visit by the state charities aid association.**—Any justice of the supreme court, on written application of the state charities aid association, through its president or other officer designated by its board of managers, may grant to such persons as may be named in such application, orders to enable such persons, or any of them, as visitors of such association, to visit, inspect and examine, in behalf of such association, any alms-house within the state. The person so appointed to visit, inspect and examine such alms-house and alms-houses, shall reside in the county or counties from which such alms-house or alms-houses receive their or some of their inmates, and such appointment shall be made by a justice of the supreme court of the judicial district in which such visitors reside. Each order shall specify the alms-house to be visited, inspected and examined, and the name of each person by whom such visitation, inspection and examination shall be made, and shall be in force for one year from the date on which it shall have been granted, unless sooner revoked.

All persons in charge of any such alms-house shall admit each person named in any such order into every part of such alms-house, and render to such person every possible facility to enable him to make in a thorough manner such visit, inspection and examination, which are hereby declared to be for a public purpose and to be made with a view to public benefit. Obedience to the orders herein authorized shall be enforced in

the same manner as obedience is enforced to an order or mandate of a court of record.

Such association shall make an annual report to the state board of charities upon matters relating to the alms-house subject to its visitation. Such reports shall be made on or before the first day of November for each preceding fiscal year.

ARTICLE VIII.

Miscellaneous Provisions.

Section 130. Superintendents and overseers may redeem on sheriff's sale.
131. Redemption, how made.
132. Moneys therefor, and how paid.
133. When warrant of seizure may be discharged.
134. Boards of supervisors may abolish or revive distinction between town and county poor.
135. Overseers, when to pay money to county treasurer.
136. Invested town money.
137. Report by supervisors.
138. Register of sex and age.
139. Care of poor persons not to be put up at auction.
140. Reports of certain other officers.
141. Alms-house commissioners to report.
142. Report of state board of charities.

§ 130. **Superintendents and overseers may redeem on sheriff's sale.**— County superintendents and overseers of the poor may redeem real property, which may have been seized by them pursuant to sections nine hundred and twenty-one to nine hundred and twenty-six of the code of criminal procedure, the same as judgment-creditors under sections fourteen hundred and thirty to fourteen hundred and seventy-eight of the code of civil procedure. No such redemption shall be made, unless at the time of such redemption the seizure of the property sought to be redeemed, shall have been confirmed by the county court of the county where the premises may be situated, nor unless such property shall, at the time of making such redemption, be held by the superintendents or overseers, under and by virtue of such seizure.

§ 131. **Redemption, how made.**— To entitle such superintendents or overseers to acquire the title of the original purchaser.

or to be substituted as purchaser from any other creditor, they shall present to and leave with such purchaser or creditor, or the officer who made the sale, the following evidence of their right:

1. A copy of the order of the county court, confirming the warrant and seizure of such property, duly verified by the clerk of the court.

2. An affidavit of one of the superintendents or overseers that such property is held by them under such warrant and seizure, and that the same have not been discharged, but are then in full force.

§ 132. **Moneys therefor, and how paid.**— The superintendents or overseers of the poor may, for the purpose of making such redemption, use any moneys in their hands belonging to the poor funds of their respective towns or counties, which moneys shall be replaced, together with the interest thereon, out of the first moneys which may be received by them from the rent or sale of the premises so redeemed.

§ 133. **When warrant of seizure may be discharged.**— If such redemption shall be made, and the person against whom the warrant was issued and seizure made shall apply to have the warrant discharged, he shall, before such warrant and seizure are discharged, in addition to the security required to be given by section nine hundred and twenty-four of the code of criminal procedure, pay to such superintendents or overseers the sum paid by them to redeem such property, together with interest thereon, from the time of such redemption.

§ 134. **Boards of supervisors may abolish or revive distinction between town and county poor.**— The board of supervisors of any county may, at an annual meeting or at a special meeting called for that purpose, by resolution, abolish or revive the distinction between town and county poor of such county, by a vote of two-thirds of all the members elected to such board, and until such abolition or revival, such county, or the towns therein, shall continue to maintain and support their poor as at the time when this chapter shall take effect. The clerk of the board shall, within thirty days after such determination, serve, or cause to be served, a copy of the resolution upon the clerk of each town, village or city within such county, and upon each of the superintendents and overseers of the poor therein. Upon filing such determination to abolish the distinction between town and county poor, duly certified by the clerk of the board,

in the office of the county clerk, the poor of the county shall thereafter be maintained, and the expense thereof defrayed, by the county; and all costs and charges attending the examinations, conveyance, support and necessary expenses of poor persons therein, shall be a charge upon the county. Such charges and expenses shall be reported by the superintendent of the poor, to the board of supervisors, and shall be assessed, levied and collected the same as other county charges.

§ 135. **Overseers, when to pay money to county treasurer.**—Within three months after notice shall have been served upon the overseers of the poor, that the distinction between town and county poor has been abolished, they shall pay over all moneys which shall remain in their hands as overseers for the use of their town, after discharging all demands against them, to the county treasurer, to be applied by him toward the future taxes of such town; and all moneys thereafter received by them, as such overseers, for the use of the poor of their town, shall be paid by them to the county treasurer within three months after receiving the same, and by him credited to the town whose overseers shall have paid the same. It shall be the duty of all officers or persons to pay to the county treasurer all moneys which shall be received for, or owing by them to the overseers of the poor of any such town, for the use of the poor thereof, pursuant to any law or obligation requiring the same to be paid to such overseers, and credited by such county treasurer to the town for whose use such moneys were received or owing. Any overseer or other person having received or owing such moneys, who shall neglect or refuse to pay the same within thirty days after demand thereof, shall be liable to an action therefor, with interest at the rate of ten per cent thereon, by such county treasurer, in the name of his county.

§ 136. **Invested town money.**—When any town shall have any moneys raised for the support of the poor, invested in the name of the overseers of the poor of such town, such overseers shall continue to have the control thereof, and shall apply the interest arising therefrom to the support of the poor of their town, so long as such town shall be liable to support its own poor, but when relieved from such liability by a vote of the supervisors of the county, the money so raised and invested shall be applied to the payment of such taxes upon the town, as the inhabitants thereof shall at an annual town meeting, or a special town meeting called for that purpose determine.

§ 137. **Report by supervisors.**— The supervisor of every town in counties where all the poor are not a county charge, shall report to the clerk of the board of supervisors, within fifteen days after the accounts of the overseers of the poor have been settled by the town board at its first annual meeting in each year, an abstract of all such accounts, which shall exhibit the number of poor persons that have been relieved or supported in such town the preceding year, specifying the number of county poor, and town poor, the whole expense of such support, the allowance made to overseers, justices, constables or other officers, which shall not comprise any part of the actual expenses of maintaining the poor.

§ 138. **Register of sex and age.**— In addition to the general register of the inmates of the various alms-houses, there shall be kept a record of the sex, age, birthplace, birth of parents, education, habits, occupation, condition of ancestors and family relations, and cause of dependence of each person at the time of admission, with such other facts and particulars in relation thereto as may be required by the state board of charities, upon forms prescribed and furnished by such board. Superintendents and overseers of the poor, and other officers charged with the relief and support of poor persons, shall furnish to the keepers or other officers in charge of such alms-houses, as full information as practicable in relation to each person sent or brought by them to such alms-house, and such keepers or other officers, shall record the information ascertained at the time of the admission of such person, on the forms so furnished. All such records shall be preserved in such alms-houses, and the keepers and other officers in charge thereof shall make copies of the same on the first day of each month, and immediately forward such copies to the state board of charities.

§ 139. **Care of poor persons not to be put up at auction.**— No officer or persons whose duty it may be to provide for the maintenance, care or support of poor persons at public expense, shall put up at auction or sale, the keeping, care or maintenance of any such poor person to the lowest bidder, and every contract which may be entered into in violation of this provision shall be void.

§ 140. **Reports of certain other officers.**— The provisions of this chapter, relating to reports by superintendents of the poor, to the state board of charities, and the penalties applicable

thereto, are hereby extended to, and made applicable to the commissioners of public charities for the city and county of New York, the superintendent of the alms-house of the county of Albany, the keeper of the alms-house of the county of Putnam, the commissioners of the alms-house elected in the cities of Newburgh and Poughkeepsie, and all poor officials elected or appointed in other cities of this state, under general or special acts of the legislature.

§ 141. **Alms-house commissioners to report.**—The commissioners of the alms-house of the cities of Newburgh and Poughkeepsie, and the poor officers of other cities chosen under special acts of the legislature, shall annually, on the first day of December, report to the superintendent of the poor of their respective counties such statistics as, from time to time, may be required to be reported in the other cities and towns under the provisions of this chapter.

§. 142. **Report of state board of charities.**—The state board of charities shall include in its annual report to the legislature the results of the information obtained from the reports to be made to it as herein provided. It shall also, from time to time, furnish to the officials so required to report to it, necessary forms, blanks and instructions required in making up such reports.

ARTICLE IX.

Law Repealed; when to Take Effect.

Section 150. Laws repealed.
151. When to take effect.

Section 150. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 151. **When to take effect.**—This chapter shall take effect on the first day of October, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

Revised Statutes, part I, ch. 20, tit. I..... All.
Revised Statutes, part I, ch. 20, tit. VI..... All.

LAWS OF—	Chapter.	Sections
1828.....	6.....	All.
1830.....	320.....	8, 9.

LAWS OF —	Chapter.	Sections.
1831	277	All.
1832	26	All.
1834	236	All.
1838	202	All.
1842	214	All.
1845	334	All.
1846	245	All.
1848	176	All.
1849	100	All.
1851	532	All.
1853	70	All.
1854	188	All.
1855	269	All.
1862	473	All.
1870	424	All.
1872	38	All.
1872	48	All.
1873	661	All.
1874	464	All.
1875	140	All.
1875	173	All.
1875	308	All.
1876	266	All.
1878	404	All.
1879	240	All.
1881	203	All.
1881	398	All.
1881	574	All.
1883	247	All.
1884	319	All.
1885	34	All.
1885	546	All.
1887	216	All.
1887	655	All.
1887	706	All.
1888	261	All.
1888	486	All.
1890	420	All.
1892	698	All.

L. 1896, ch. 225.	Ch. 27, G. L.	
LAWS OF—	Chapter.	Sections.
1893.....	42.....	All.
1894.....	436.....	All.
1894.....	663.....	All.
1895.....	783.....	All.

THE INSANITY LAW,

As amended to the commencement of the session of 1897.

L. 1896, ch. 545 — An act in relation to the insane, constituting chapter twenty-eight of the general laws.

[Became a law May 13, 1896, taking effect July 1, 1896.]

CHAPTER XXVIII OF THE GENERAL LAWS.

The Insanity Law.

Article 1. State commission in lunacy (§§ 1-16).
2. Institutions for the care, treatment and custody of the insane (§§ 30-49).
3. Commitment, care, and discharge of the insane (§§ 60-77).
4. Matteawan state hospital for insane criminals (§§ 90-103).
5. Laws repealed, when to take effect (§§ 110-111).

ARTICLE I.

State Commission in Lunacy.

Section 1. Short title.
2. Definitions.
3. Appointment, qualifications, terms of office and salaries of commissioners.
4. Office and clerical force of commission.
5. Official seal and execution of papers.
6. General powers.
7. Official visits.
8. Regulations and forms.
9. Annual report.
10. State hospital districts; how defined.

Section 11. Change of business districts and reassignment of patients.

12. Record of medical examiners.

13. Record of patients.

14. Institutions to furnish information to commission.

15. Commission to provide for the prospective wants of the insane.

16. Director of the pathological institute.

Section 1. **Short title.** — This chapter shall be known as the insanity law.

§ 2. **Definitions.**— When used in this chapter, the term poor person means a person who is unable to maintain himself and having no one legally liable and able to maintain him; the term, an indigent person, means one who has not sufficient property to support himself while insane, and the members of his family lawfully dependent upon him for support; the term institution means any hospital, asylum, building, buildings, house or retreat, authorized by law to have the care, treatment or custody of the insane; the term commission means the state commission in lunacy; the term patient means an insane person committed to an institution according to the provisions of this chapter.

§ 3. **Appointment, qualifications, terms of office and salaries of commissioners.**— There shall continue to be a state commission in lunacy, consisting of three commissioners, all of whom shall be citizens of this state. One of them, who shall be president of the commission, shall be a reputable physician, a graduate of an incorporated medical college, of at least ten years' experience in the actual practice of his profession, who has had five years' actual experience in the care and treatment of the insane and who has had experience in the management of institutions for the insane. He shall receive an annual salary of five thousand dollars. One of such commissioners shall be a reputable attorney and counsellor-at-law of the courts of this state of not less than ten years' standing, who shall receive an annual salary of three thousand dollars. The third commissioner shall be a reputable citizen, and shall receive ten dollars per day for actual services rendered as a member of the commission. Such salaries may be fixed by the governor, secretary of state and comptroller, at different amounts than those pre-

scribed in this section, whenever in their discretion such amounts should be changed. Each commissioner shall receive annually twelve hundred dollars, payable monthly, in lieu of his traveling and incidental expenses. The full term of office of a commissioner shall be six years. Where the term of office of a commissioner expires at a time other than the last day of December, the term of office of his successor is abridged so as to expire on the last day of December, preceding the time when such term would otherwise expire, and the term of office of each commissioner thereafter appointed shall begin on the first day of January. The commissioners shall be appointed by the governor, by and with the advice and consent of the senate.

§ 4. **Office and clerical force of commission.**— The commission shall be provided by the proper authorities with a suitably furnished office in the state capitol, where it shall hold stated meetings at least once in three months. It may hold other meetings, at such office or elsewhere, as it may deem necessary. It may employ a secretary, a stenographer and such other employes as may be necessary. The salaries and reasonable expenses of the commission and of the necessary clerical assistants shall be paid by the treasurer of the state on the warrant of the comptroller, out of any moneys appropriated for the support of the insane.

§ 5. **Official seal and execution of papers.**— The commission shall have an official seal. Every process, order or other paper issued or executed by the commission, may, by the direction of the commission, be attested, under its seal, by its secretary or by any member of the commission, and when so attested shall be deemed to be duly executed by the commission.

§ 6. **General powers.**— The commission is charged with the execution of the laws relating to the custody, care and treatment of the insane, as provided in this act, not including feeble-minded persons and epileptics as such and idiots. They shall examine all institutions, public and private, authorized by law to receive and care for the insane, and inquire into their methods of government and the management of all such persons therein. They shall examine into the condition of all buildings, grounds and other property connected with any such institution, and into all matters relating to its management. For such purpose

each commissioner shall have free access to the grounds, buildings and all books and papers relating to any such institution. All persons connected with any such institution shall give such information, and afford such facilities for any such examination or inquiry as the commissioners may require. The commission may, by order, appoint a competent person to examine the books, papers and accounts, and also into the general condition and management of any institution to the extent deemed necessary and specified in the order.

§ 7. **Official visits.**— The commission, or a majority thereof, shall visit every such institution at least twice in each calendar year. Such visits shall be made jointly or by a majority of the commission on such days and at such hours of the day or night, and for such length of time, as the visiting commissioners may choose. But each commissioner may make such other visits as he or the commission may deem necessary. Each visit shall include, to the fullest extent deemed necessary, an inspection of every part of each institution, and all the out-houses, places, buildings and grounds belonging thereto or used in connection therewith. The commissioners shall, from time to time, make an examination of all the records and methods of administration, the general and special dietary, the stores and methods of supply, and, as far as circumstances may permit, of every patient confined therein, especially those admitted since the preceding visit, giving such as may require it suitable opportunity to converse with the commissioners apart from the officers and attendants. They shall, as far as they deem necessary, examine the officers, attendants and other employes, and much such inquiries as will determine their fitness for their respective duties. At the next regular or special meeting of the commission, after any such visit, the visiting commissioners shall report the result thereof, with such recommendations for the better management or improvement of any such institution, as they may deem necessary. But such recommendations shall not be contrary to the doctrines of the particular school of medicine adopted by such institutions. The commissioners shall, from time to time, meet the managers or responsible authorities of such institutions, or as many of the number as practicable, in conference, and consider, in detail, all questions of management and im-

provement of the institution, and shall also send to them, in writing, if approved by a majority of the commissioners, such recommendation in regard to the management and improvement of the institution as they may deem necessary or desirable.

§ 8. **Regulations and forms.**— The commission shall make such regulations in regard to the correspondence of the insane in custody as in its judgment will promote their interests, and it shall be the duty of the proper authorities of each institution to comply with and enforce such rules and regulations. All such insane shall be allowed to correspond without restriction with the county judge and district attorney of the county from which they were committed. The books of record and blank forms for the official use of the hospitals shall be uniform, and shall be approved by the commission.

§ 9. **Annual report.**— The commission shall, annually, report to the legislature its acts and proceedings for the year ending September thirtieth last preceding, with such facts in regard to the management of the institutions for the insane as it may deem necessary for the information of the legislature, including estimates of the amounts required for the use of the state hospitals and the reasons therefor; and also the annual reports made to the commission by the board of managers of each state hospital and by the State Charities Aid association.

§ 10. **State hospital districts; how defined.**— The state commission in lunacy shall divide the state into as many state hospital districts as there are state hospitals. No county shall be divided in such classification, unless more than one of the existing state hospitals be situated within such county. Whenever the commission shall deem it necessary to more conveniently care for the insane in the various hospitals, it may change the limits of such hospital districts. When a new state hospital shall be established, they shall again divide the state into hospital districts. Before any such change or re-establishment of hospital districts shall be made, the board of managers of each such hospital shall be notified by the commission that they may be heard in regard thereto at a specified time and place. Such hospital districts shall be so defined that the number of patients in each district shall be in proportion, as nearly as practicable, to the accommodations which are or may be provided by the state hospital or hospitals within such district.

§ 11. **Change of hospital districts and reassignment of patients.**—When a change or re-establishment of state hospital districts shall be made, or a new state hospital district created, the commission shall make a report thereof, designating the counties included within each district affected thereby, and file the same with the secretary of state, and send a copy to the managers and superintendent of each state hospital, and to each judge of a court of record, each county superintendent of the poor, and each county clerk in the state, to be filed in his office.

§ 12. **Record of medical examiners.**—Any physician who receives a certificate as a medical examiner in lunacy shall file such original certificate in the office of the clerk of the county where he resides, and forward a certified copy thereof to the office of the commission within ten days after such certificate is granted. The commission shall keep in its office a record showing the name, residence and certificate of each duly qualified medical examiner, and shall immediately file in its office, when received, each duly certified copy of a medical examiner's certificate, and advise the examiner of its receipt and filing. No examiner shall be qualified until he has received from the commission an acknowledgment of the receipt and filing of his certificate.

§ 13. **Record of patients.**—The commission shall keep in its office, and accessible only to the commissioners, their secretary and clerk, except by the consent of the commission or one of its members, or an order of a judge of a court of record, a record showing:

1. The name, residence, sex, age, nativity, occupation, civil condition and date of commitment of every patient in custody in the several institutions for the care and treatment of insane persons in the state, and the name and residence of the person making the petition for commitment, and of the persons signing such medical certificate, and of the judge making the order of commitment.

2. The name of the institution where each patient is confined, the date of admission, and whether brought from home or another institution, and if from another institution, the name of such institution, by whom brought, and the patient's condition.

3. The date of the discharge of each patient from such institution since the fifteenth day of May, eighteen hundred and eighty-nine, and whether recovered, improved or unimproved, and to whose care committed.

4. If transferred, for what cause, and to what institution; and if dead, the date and cause of death.

§ 14. **Institutions to furnish information to commission.**— The authorities of the several institutions for the insane shall furnish to the commission the facts mentioned in the last preceding section, and such other obtainable facts relating thereto as the commission may, from time to time, in the just and reasonable discharge of its duties, require of them, with the opinion of the superintendent thereon, if requested. The superintendent or person in charge of such institutions, whether public or private, must, within ten days after the admission of an insane person thereto, cause a true copy of the medical certificate and order on which such person shall have been received, to be made and forwarded to the office of the commission; and when a patient shall be discharged, transferred or shall die therein, such superintendent or person in charge shall, within three days thereafter, send the information to the office of the commission, in accordance with the forms prescribed by it.

§ 15. **Commission to provide for the prospective wants of the insane.** — The commission shall provide sufficient accommodations for the prospective wants of the poor and indigent insane of the state. To prevent overcrowding in the state hospitals, it shall recommend to the legislature the establishment of other state hospitals, in such parts of the state as in their judgment will best meet the requirements of such insane. It shall also furnish to the legislature in each year, an estimate of the probable number of patients who will become inmates of the respective state hospitals during the year beginning October first next ensuing, and the cost of all the additional buildings and equipments, if any, which will be required to carry out the provisions of this chapter relating to the care, custody and treatment of the poor and indigent insane of the state. No money shall be expended by the managers of a state hospital for the erection of additional buildings, or for unusual repairs or improvements of state hospitals, except upon plans and specifications to be approved by the commission. The cost of such build-

ings as are to be occupied by patients erected on the grounds of existing state hospitals, including the necessary equipment for heating, lighting, ventilating, fixtures and furniture, shall, in no case exceed the proportion of five hundred and fifty dollars per capita for the patients to be accommodated therein. No municipality of the state shall have the power to modify or change plans or specifications for the erection, repair or improvement of state hospital buildings or the plumbing or sewerage connected therewith.

§ 16. **Director of the pathological institute.**— The commission shall, after a special civil service examination therefor, appoint a director of the pathological institute, who shall perform, under the direction of the commission, such duties relating to pathological research as may be required for all of the state hospitals for the insane. His office and laboratory shall be in the city of New York. He shall receive an annual salary to be fixed by the commission, subject to the approval of the governor.

ARTICLE II.

Institutions for the Care, Treatment and Custody of the Insane.

Section 30. State hospitals for the poor and indigent insane.
31. Managers of state hospitals and their terms of office.
32. Appointment and removal of managers.
33. General powers and duties of boards of managers.
34. Appointments of resident officers by managers.
35. General powers and duties of superintendent.
36. The general and medical superintendents of the Long Island and Manhattan State hospital.
37. Monthly meetings of superintendents.
38. Salaries of officers and wages of employes.
39. Monthly estimates of expenses; contingent fund.
40. Powers and duties of treasurer.
41. Monthly statement of receipts and expenditures; vouchers.
42. Actions to recover moneys due the hospital.
43. General powers and duties of the steward.
44. Purchases.
45. Official oath.
46. Actions against commissioners in lunacy, or officers or employes of state hospitals.

Section 47. Private institutions for the insane.
48. Recommendations of commission.
49. Visitors to state hospitals.

§ 30. **State hospitals for the poor and indigent insane.**— There shall continue to be the following hospitals for the care and treatment of the poor and indigent insane of the state which are hereby declared to be corporations; but other insane persons, who are residents of the state, may be admitted when there is room therein for them:

1. Utica State hospital, at the city of Utica, in the county of Oneida.

2. Willard State hospital, in the town of Ovid, county of Seneca.

3. Hudson River State hospital, near the city of Poughkeepsie, in the county of Dutchess.

4. Buffalo State hospital, in the city of Buffalo, county of Erie.

5. Middletown State Homoeopathic hospital, at Middletown, in the county of Orange.

6. Binghamton State hospital, at Binghamton, in the county of Broome.

7. Rochester State hospital, at the city of Rochester, in the county of Monroe.

8. Saint Lawrence State hospital, near the city of Ogdensburg, in the county of Saint Lawrence.

9. Collins State Homoeopathic hospital for the insane, in the town of Collins, county of Erie.

10. Long Island State hospital, at Kings Park, Suffolk county, Long Island.

11. Manhattan State hospital, in New York city and at Central Islip, Suffolk county.

§ 31. **Managers of state hospitals and their terms of office.**— Each state hospital shall be under the control and management of its present board of managers or trustees, subject to the statutory powers of the commission, and to the provisions of this section as to the modification of their terms of office and the number of such trustees. Such trustees or managers shall here-

after be termed managers. On or before the thirty-first of December, after this chapter takes effect, and at which time the terms of the managers then in office shall expire, the governor shall appoint a board consisting of seven members for each state hospital by so arranging terms of one, two, three, four, five, six and seven years, that a term shall expire on the thirty-first day of December in each year, beginning with the year eighteen hundred and ninety-seven. If a vacancy occur otherwise than by expiration of term, the appointment of a manager to fill such vacancy shall be for the unexpired term of the manager whose office became vacant; but the provisions of this section shall not apply to the Middletown State Homoeopathic hospital at Middletown, in the county of Orange, where the number of managers shall be thirteen.

§ 32. Appointment and removal of managers.— The managers and their successors appointed after the appointment and classification made pursuant to the preceding section, shall severally be appointed by the governor, by and with the advice and consent of the senate, as often as a vacancy shall occur by expiration of term, or otherwise; and they may severally continue in office until their successors are appointed and have qualified; and they shall be subject to removal by the governor upon cause shown and an opportunity to be heard. All managers hereafter appointed shall reside in the hospital district in which the hospital is situated for which they are respectively appointed, but no person shall be eligible to the office of manager who is either an elective state officer or a member of the legislature, and if any such manager shall become a member of the legislature or such elective state officer, his office as manager shall be vacant. All the managers of the Middletown State Homeopathic hospital and of the Collins State Homeopathic hospital may be appointed from any portion of the state and shall be adherents of homeopathy. If any manager fails for one year to attend the regular meetings of the board of which he is a member, his office shall be vacant, and the board by resolution shall so declare, and a certified copy of every such resolution shall forthwith be transmitted by the board to the governor.

§ 33. General powers and duties of boards of managers.— Subject to the statutory powers of the commission, each board of managers shall have the general direction and control of all

the property and concerns of the institution over which they are respectively appointed, not otherwise provided by law. They may acquire and hold in the name of and for the people of the state of New York by grant, gift, devise or bequest, property to be applied to the maintenance of insane persons in and for the general use of the hospital. All lands necessary for the use of state hospitals shall be acquired by condemnation as lands for public use are acquired, except those by gift, devise or purchase, the terms of which purchase shall be approved by the commission and the state comptroller. No public street or road for railroad or other purposes shall be opened through the lands of a state hospital, unless the legislature, by special act, consents thereto. The managers shall not receive any compensation for their services, but shall receive actual and necessary traveling and other expenses, to be paid after audit as other current expenditures of the hospital. Each board shall:

1. Take care of the general interests of the hospital and see that its design is carried into effect, according to law, and its by-laws, rules and regulations.

2. Establish such by-laws, rules and regulations as they may deem necessary and expedient for regulating the appointment and duties of officers and employes of the hospital, and for the internal government, discipline and management of the same.

3. Maintain an effective inspection of the hospital, for which purpose a majority of the board shall visit the hospital at least every three months, and the whole board once a year, and at such other times as may be prescribed in the by-laws.

4. Keep in a book provided for that purpose, a fair and full record of their doings, which shall be open at all times to the inspection of the governor of the state, the commissioners in lunacy, or any person appointed by the governor, the commission in lunacy, or either house of the legislature to examine the same.

5. Cause to be typewritten within ten days after each meeting of such managers, or a committee thereof, the minutes and proceedings of such meeting, and cause a copy thereof to be sent forthwith to each member of such board and to the commission.

6. Enter in a book kept by them for that purpose, the date of each of their visits, and the condition of the hospital and patients, and all such managers present shall sign the same.

7. Make to the commission, in October of each year, a detailed report of the results of their visits and inspection, with suitable suggestions and such other matters as may be required of them by the commission, for the year ending on the thirtieth day of September preceding the date of such report. The resident officers shall admit such managers into every part of the hospital and its buildings, and exhibit to them on demand all the books, papers, accounts and writings belonging to the hospital or pertaining to its business, management, discipline or government, and furnish copies, abstracts and reports whenever required by them.

§ 34. Appointments of officers by managers.— Each of such boards shall continue to appoint for its hospital, as often as vacancies occur therein:

1. A superintendent, who shall be a well-educated physician and a graduate of an incorporated medical college, of at least five years' actual experience in an institution for the care and treatment of the insane. The superintendents and all assistant physicians of homeopathic hospitals for the insane shall be homeopathic physicians, but such homeopathic physicians shall not be eligible to appointment in or transfer to state hospitals that are not for homeopathic treatment.

2. A treasurer, who shall keep all the books, records and papers pertaining to his official duties, in an office situated where the board of managers may direct, who shall give an undertaking to the people of the state for the faithful performance of his trust, with sureties to be approved by the county judge of the county or a justice of the supreme court of the judicial district in which such hospital is located, and in such amount as the comptroller of the state shall name. Such superintendent or treasurer may be removed by a vote of a majority of the board of managers for cause stated in writing, an opportunity having been given them to be heard, and such action shall be final.

§ 35. General powers and duties of superintendent.— The superintendent of each hospital shall be its chief executive officer, and in his absence or sickness, the first assistant physician or other officer designated by the superintendent shall perform the duties and be subject to the responsibilities of the superintendent. Subject to the by-laws and regulations estab-

lished by the board of managers, the superintendent shall have the general superintendence of the buildings, grounds and farm, together with their furniture, fixtures and stock, and the direction and control of all persons therein, and shall:

1. Personally maintain an effective supervision and inspection of all parts of the hospital and generally direct the care and treatment of the patients. To this end the superintendent shall personally examine the condition of each patient, within five days after his admission to the hospital, and shall regularly visit all of the wards or apartments for patients at such times as the rules and regulations of the hospital shall prescribe.

2. Appoint such resident officers, including a woman physician, and such employes as he may think proper and necessary for the economical and efficient performance of the business of the hospital and prescribe their duties and discharge any of such employes in his discretion. The number of such resident officers and employes shall be determined by the commission. The superintendent may remove any resident officer for cause stated in writing, after an opportunity to be heard, and such action of the superintendent shall be final. Upon any such removal he shall make a record thereof, with the reasons therefor, under the appropriate head in one of the books of the hospital.

The superintendent, assistant physicians, including the woman physician, steward and matron shall constantly reside in the hospital, or on the premises, and shall be designated the resident officers of the hospital. The assistant physicians, including the woman physician, shall be graduates of an incorporated medical college, and shall possess such other qualifications as may be required by law.

3. Transmit, by mail, to the commission in lunacy, within five days after any such discharge, information of such discharge, and of the cause thereof. The commission shall preserve the name of such officer, or employe, with the facts relating to his discharge, in a book provided for that purpose.

4. Appoint such number of special policemen as may be determined, whose duty it shall be, under the orders of the superintendent, to arrest and return to the hospital insane persons who may escape therefrom, and to preserve peace and good order in such hospital and to fully protect the grounds, buildings and patients. Such policemen shall possess all the powers of peace

officers on the grounds and premises of such hospital and to the extent of one hundred yards beyond such grounds. The appointment of special policemen, in pursuance hereof, shall not be deemed to supersede, on the grounds and premises of such hospital, the authority of peace officers of the jurisdiction within which such hospital is located.

5. Give such orders and instructions as he may deem best calculated to insure good conduct, fidelity and economy in every department of labor and expense.

6. Maintain salutary discipline among all who are employed in the institution and enforce strict compliance with his instructions and uniform obedience to all rules and regulations of the hospital.

7. Establish and supervise a training school for attendants and nurses, under rules and regulations of the hospital.

8. Cause full and fair accounts and records of all his doings and of the entire business and operations of the hospital, to be kept regularly, from day to day, in books provided for that purpose.

9. See that all such accounts and records are fully made up to the last day of September in each year, and that the principal facts and results, with his report thereon, be presented to the managers within thirty days thereafter, who shall incorporate it in their report to the commission.

10. Keep a book, in which he shall cause to be entered at the time of reception of any patient, his name, residence and occupation, and the date of such reception, by whom brought and by what authority and on whose petition committed, and an abstract of all orders, warrants, requests, petitions, certificates and other papers accompanying such person.

§ 36. **The general and medical superintendents of the Long Island and Manhattan state hospitals.**— There shall be a general superintendent of the Long Island state hospital and a general superintendent of the Manhattan state hospital, each of whom, as often as vacancies occur, shall be appointed by the board of managers of each such hospital. General superintendents shall be subject to removal by a vote of a majority of such board for cause stated in writing, after an opportunity to be heard, and such action shall be final. Such general superintendent shall possess the same qualifications as the superintend-

ent of other state hospitals, and shall have the same general powers and duties as provided by section thirty-five of this chapter. The general superintendent of the Long Island State hospital shall appoint two medical superintendents, one for the part of the hospital located at Kings Park, and one for that at Brooklyn. The general superintendent of the Manhattan State hospital shall appoint three medical superintendents, two of whom shall reside at Ward's island, one for the men's department and one for the women's department, and one at Central Islip. Each general superintendent shall appoint a steward for each hospital and as many matrons as the necessities of the hospital may require. The medical superintendents and other resident officers may be removed by such general superintendents, for cause stated in writing, after an opportunity to be heard, and such action of the general superintendents shall be final. The medical superintendents so appointed shall have the same statutory qualifications as superintendents of other state hospitals. Each shall have the powers and perform the duties prescribed by the general superintendent, and shall be subject to the direction and control of such general superintendent and the rules and regulations of the hospital.

§ 37. **Meetings of superintendents.**— The superintendents of the several state hospitals, or their representatives, including the general superintendents of the Long Island and Manhattan state hospitals and, in the discretion of each board of managers, one member of each board to be designated by it, shall meet at least once in every month, on a day to be appointed by the commission, at the office of the commission at Albany, or at such other place as may be designated by it, to consult with such commission with reference to matters relating to the care and maintenance of the state hospitals and particularly with reference to the purchase of supplies for their use.

§ 38. **Salaries of officers and wages of employes.**— The commission, from time to time, with the approval in writing of the governor, secretary of state and comptroller, shall fix the annual salaries of the resident officers and treasurers of the state hospitals, which shall be uniform for like services. They shall classify the other officers and employes into grades, and determine the salaries and wages to be paid in each grade, which shall be uniform in all the hospitals. The salaries and

wages shall be included in the monthly estimates and paid in the same manner as other expenses of the state hospitals. Food supplies shall be allowed to officers and employes and the families of the superintendents, general superintendents, medical superintendents, first assistant physicians and stewards. Food supplies shall continue to be allowed the families of the assistant physicians, residing at the hospitals on January first, eighteen hundred and ninety-six. Such families shall consist only of the wives and minor children of such officers; no other persons, except those regularly employed, shall be allowed rooms and maintenance, except at a rate to be fixed by the commission; such supplies shall be drawn from the supplies provided for general hospital use.

§ 39. **Monthly estimates of expenses; contingent fund.**— The superintendent of each of the state hospitals shall, on or before the fifteenth day of each month, cause to be prepared triplicate estimates in minute detail, of the expenses required for the hospital of which he is superintendent, for the ensuing month. He shall submit two of such triplicates to the commission and file the third copy in the office of the superintendent. The commission may revise estimates for supplies or other expenditures either as to quantity, quality, or the estimated cost thereof, and shall certify that it has carefully examined the same and that the articles contained in such estimate, as approved or revised by it, are actually required for the use of the hospital, and shall thereupon present such estimate and certificate to the comptroller. Upon the revision and approval of such estimate by the commission, the comptroller shall authorize the boards of managers to make drafts on the comptroller, as the money may be required for the purposes mentioned in such estimates, which drafts shall be paid on the warrant of the comptroller, out of the funds in the treasury of the state held for the care of the insane and the maintenance of state hospitals. In every such estimate, there shall be a sum named, not to exceed one thousand dollars, as a contingent fund for which no minute detailed statement need be made. No expenditure shall be made from such contingent fund, except in case of actual emergency, requiring immediate action and which can not be deferred without incurring loss or danger to the hos-

pital or the inmates thereof. No money shall be expended for the use of any of the state hospitals, except as provided in this section. Libraries may be furnished to any state hospital by the regents of the university of the state of New York, subject to regulations adopted by them and the commission, the expense of which shall be included in the monthly estimates of the hospital.

§ 40. **Powers and duties of treasurer.**— The treasurer of each hospital shall:

1. Have the custody of all moneys received from the comptroller on account of estimates made by the superintendent and revised and approved by the commission, and keep an accurate account thereof.

2. Have the custody of all bonds, notes, mortgages and other securities and obligations belonging to the hospital.

3. Receive all money for the care and treatment of private patients and other sources of revenue of the hospital.

4. Deposit all such money in a bank designated by the comptroller conveniently near the hospital, in his name as treasurer, and send each month to the comptroller, to the commission and to the board of managers a statement, showing the amount so received and deposited, and from whom and for what received, and when such deposits were made. Such statement of deposit shall be certified by the proper officer of the bank receiving such deposit. The treasurer shall make an affidavit to the effect that the sum so deposited is all the money received by him, from any source of hospital income, up to the time of the last deposit appearing on such statement. A bank designated by the comptroller to receive such deposits shall, before any deposit is made, execute a bond to the people of the state, in a sum approved by the comptroller, for the safe keeping of the funds deposited.

5. Pay out the money deposited for the uses of the state hospital, upon the voucher of the steward, approved by the superintendent in accordance with the estimates made by the superintendent and revised and approved by the commission.

6. Keep full and accurate accounts of all receipts and payments, in the manner directed in the by-laws and according to books and forms prescribed and furnished by the commission.

7. Balance all accounts on his books, annually, on the last day of September, and make a statement thereof and an abstract of the receipts and payments of the past year and deliver the same, within ten days, to the executive committee of the managers, who shall compare the same with the books and vouchers and verify the results by further comparison with the books of the steward, and certify in regard to the correctness thereof to the managers at their next meeting.

8. Render an account of the state of the books and the funds and other property in his custody, whenever required by the managers, or the commission.

9. Execute a release and satisfaction of a mortgage, judgment or other lien or debt in favor of the hospital, when paid.

§ 41. Monthly statements of receipts and expenditures; vouchers. — The treasurer of each state hospital shall, on or before the fifteenth day of each month, make to the comptroller and to the commission a full and perfect statement of all the receipts and expenditures, specifying the several items, for the last preceding calendar month. Such statement shall be verified by the affidavit of the treasurer attached thereto, in the following form:

I, ..., treasurer of the ..... state hospital, do solemnly swear that I have deposited in the bank designated by law for such purpose, all the moneys received by me on account of the hospital during the last month, and I do further swear that the foregoing is a true abstract of all the moneys received and payments made by me or under my direction as such treasurer during the month ending on the ..... day of ....., 18..

There shall also be attached thereto the affidavit of the steward, to the effect that the goods and other articles therein specified were purchased and received by him, or under his directions, at the hospital; that the goods were purchased at a fair cash market price and paid for in cash, or on credit, not exceeding thirty days, and that he, or any person in his behalf, had no pecuniary or other interest in the articles purchased; that he received no pecuniary or other benefit therefrom in the way of commission, percentage, deductions or presents, or in any other manner whatever, directly or indirectly; that the

articles contained in such bill were received at the hospital; that they conformed in all respects to the invoiced goods received and ordered by him, both in quality and quantity. Such statement shall be accompanied by the voucher showing the payment of the several items contained in the statement and the approval thereof by the superintendent, the amount of such payment and for what the payment was made. Such approval may be contained on an audit sheet, which shall refer to each voucher approved by the superintendent, giving the number of voucher, the name of the claimant and the amount at which it was approved. Such vouchers shall be examined by the commission and compared with the estimates made for the month for which the statement is rendered, and if found correct shall be indorsed and forwarded by the commission, with the statement to the comptroller. If any voucher is found objectionable, the comptroller shall indorse his disapproval thereon, with the reason therefor, and return it to the treasurer, who shall present it to the superintendent for correction, and when corrected return it to the comptroller. All such vouchers shall be filed in the office of the comptroller.

§ 42. **Actions to recover moneys due the hospital.**— The treasurer of any state hospital may bring an action in the name of the hospital, to recover for the use thereof:

1. The amount due upon any note or bond in his hands belonging to the hospital.

2. The amount charged and due, according to the by-laws of the hospital, for the support of any patient therein, or for actual disbursements made in his behalf for necessary clothing and traveling expenses.

3. Upon any cause of action accruing to the hospital.

§ 43. **General powers and duties of the steward.**— The steward, under the direction of the superintendent, shall be accountable for the careful keeping and economical use of all furniture, stores and other articles provided for the hospital, and under the direction of the superintendent, shall:

1. Make all purchases for the hospital and preserve the original bills and receipts thereof, and keep full and accurate accounts of the same.

2. Prepare and keep the pay-rolls of the hospital.

3. Keep the accounts for the support of patients and expenses incurred in their behalf, and furnish the treasurer statements thereof as they fall due.

4. Notify the treasurer of the death or discharge of any reimbursing or pay patient, within five days after such death or discharge.

§ 44. Purchases.— All purchases of supplies for the use of the hospital shall be made for cash or on credit or time, not exceeding sixty days; every voucher shall be duly filled up, and with every abstract of vouchers paid, there shall be proof on oath that the voucher was properly filled up and the money paid. No expenditures for supplies or other purposes shall be made by the board of managers of any state hospital for the benefit of such hospital, by contract or otherwise, unless in conformity with the provisions of this act in relation to estimates. No manager or officer of a hospital shall be interested, directly or indirectly, in the furnishing of material, labor or supplies for the use of the hospital, nor shall any manager or officer act as attorney or counsel for such hospital. Contracts may be entered into jointly, by the representatives of the managers of two or more of the state hospitals, for such staple articles of supplies, as it may be found feasible, by the commission, for the hospitals to purchase in bulk under such contracts. Such contracts shall not be let except in conformity with the provisions of this act relating to estimates. Such contracts shall be executed by one of such representatives of the managers to be designated by them. The state hospitals may manufacture such supplies and materials to be used in any of such hospitals as can be economically made therein.

§ 45. Official oath.— Each superintendent, treasurer and steward of a hospital, before entering upon his duties as such, shall take the constitutional oath of office and file the same in the office of the secretary of state.

§ 46. Actions against commissioners in lunacy, or officers of state hospitals.— No civil action shall be brought in any court against the commission or a commissioner in lunacy, or an officer or manager of a state hospital, for alleged damages because of any act done or failure to perform any act, while discharging their official duties, without leave of a judge of the supreme court, first had and obtained. Any just claim for damages

against such commission or commissioner, officer or employe for which the state would be legally or equitably liable, may be paid out of any moneys appropriated for the care of the insane.

§ 47. Private institutions for the insane.— No person, association or corporation shall establish or keep an institution for the care, custody or treatment of the insane, for compensation or hire, without first obtaining a license therefor from the commission. Every application for such license shall be accompanied by a plan of the premises proposed to be occupied, describing the capacities of the buildings for the uses intended, the extent and location of grounds appurtenant thereto, and the number of patients proposed to be received therein, with such other information, and in such form, as the commission may require. The commission shall not grant any such license without first having made an examination of the premises proposed to be licensed, and being satisfied that they are substantially as described, and are otherwise fit and suitable for the purposes for which they are designed to be used, and that such license should be granted. The commission may, at any and all times, examine and ascertain how far a licensed institution is conducted in compliance with the license therefor, and after due notice to the institution and opportunity for it to be heard, the commission having made a record of the proceeding upon such hearing, may, if the interests of the inmates of the institution so demand, for just and reasonable cause then appearing and to be stated in its order, amend or revoke any such license by an order to take effect within such time after the service thereof upon the licensee, as the commission shall determine.

§ 48. Recommendations of commission.— The authorities of each institution for the insane shall place on file in the office of the institution, the recommendations made by the commissioners as a result of their visits, for the purpose of consultation by such authorities, and for reference by the commissioners upon their visits.

§ 49. Visitors to state hospitals.— Justices of the supreme court are authorized to appoint visitors to state hospitals, upon nomination of the state charities aid association, as provided by law.

ARTICLE III.

Commitment, Custody and Discharge of the Insane.

Section 60. Order for commitment of an insane person.
61. Medical examiners in lunacy; certificates of lunacy.
62. Proceedings to determine the question of insanity.
63. Appeal from order of commitment.
64. Costs of commitment.
65. Liability for care and support of poor and indigent insane.
66. Liability for the care and support of the insane, other than the poor and indigent.
67. Duties of local officers in regard to the insane.
68. Duty of committee and others to care for the insane; apprehension and confinement of a dangerous insane person.
69. Patients admitted under special agreement.
70. Entries in case book.
71. Transfer of patients when hospital is overcrowded.
72. Investigation into the care and treatment of the insane.
73. Habeas corpus.
74. Discharge of patients.
75. Clothing and money to be furnished discharged patients.
76. Transfer of nonresident patients.
77. Insane Indians.

§ 60. **Order for commitment of an insane person.**— A person alleged to be insane and who is not in confinement on a criminal charge, may be committed to and confined in an institution for the custody and treatment of the insane, upon an order made by a judge of a court of record of the city or county, or a justice of the supreme court of the judicial district, in which the alleged insane person resides or may be, adjudging such person to be insane, upon a certificate of lunacy made by two qualified medical examiners in lunacy, accompanied by a verified petition therefor, or upon such certificate and petition, and after a hearing to determine such question, as provided in this article. The com-

mission shall prescribe and furnish blanks for such certificates and petitions, which shall be made only upon such blanks. An insane person shall be committed only to a state hospital, a duly licensed institution for the insane, or the Matteawan State hospital, or to the care and custody of a relative or committee, as hereinafter provided. No idiot shall be committed to or confined in a state hospital. But any epileptic or feeble-minded person becoming insane may be committed as an insane person to a state hospital for custody and treatment therein.

§ 61. **Medical examiners in lunacy; certificates of lunacy.**— The certificate of lunacy must show that such person is insane and must be made by two reputable physicians, graduates of an incorporated medical college, who have been in the actual practice of their profession at least three years, and have filed with the commission a certified copy of the certificate of a judge of a court of record, showing such qualifications in accordance with forms prescribed by the commission. Such physicians shall jointly make a final examination of the person alleged to be insane within ten days next before the granting of the order. The date of the certificate of lunacy shall be the date of such joint examination. Such certificate of lunacy shall be in the form prescribed by the commission, and shall contain the facts and circumstances upon which the judgment of the physicians is based and show that the condition of the person examined is such as to require care and treatment in an institution for the care, custody and treatment of the insane. Neither of such physicians shall be a relative of the person applying for the order or of the person alleged to be insane, or a manager, superintendent, proprietor, officer, stockholder, or have any pecuniary interest, directly or indirectly, or be an attending physician in the institution to which it is proposed to commit such person.

§ 62. **Proceedings to determine the question of insanity.**— Any person with whom an alleged insane person may reside or at whose house he may be, or the father or mother, husband or wife, brother or sister, or the child of any such person, and any overseer of the poor of the town, and superintendent of the poor of the county in which any such person may be, may apply for such order, by presenting a verified petition containing a state-

ment of the facts upon which the allegation of insanity is based, and because of which the application for the order is made. Such petition shall be accompanied by the certificate of lunacy of the medical examiners, as prescribed in the preceding section. Notice of such application shall be served personally, at least one day before making such application, upon the person alleged to be insane, and if made by an overseer or superintendent of the poor, also upon the husband or wife, father or mother or next of kin of such alleged insane person, if there be any such known to be residing within the county, and if not, upon the person with whom such alleged insane person may reside, or at whose house he may be. The judge to whom the application is to be made may dispense with such personal service, or may direct substituted service to be made upon some person to be designated by him. He shall state in a certificate to be attached to the petition his reasons for dispensing with personal service of such notice, and if substituted service is directed, the name of the person to be served therewith. The judge to whom such application is made may, if no demand is made for a hearing in behalf of the alleged insane person, proceed forthwith to determine the question of insanity, and if satisfied that the alleged insane person is insane, may immediately issue an order for the commitment of such person to an institution for the custody and treatment of the insane. If, however, it appears that such insane person is harmless and his relatives or a committee of his person are willing and able to properly care for him, at some place other than such institution, upon their written consent, the judge may order that he be placed in the care and custody of such relatives or such committee. Such judge may, in his discretion, require other proofs in addition to the petition and certificate of the medical examiners. Upon the demand of any relative or near friend in behalf of such alleged insane person, the judge shall, or he may upon his own motion, issue an order directing the hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion, may name. Upon such day, or upon such other day to which the proceeding shall be regularly

adjourned, he shall hear the testimony introduced by the parties and examine the alleged insane person if deemed advisable, in or out of court, and render a decision in writing as to such person's insanity. If it be determined that such person is insane, the judge shall forthwith issue his order committing him to an institution for the custody and treatment of the insane, or make such other order as is provided in this section. If such judge can not hear the application he may, in his order directing the hearing, name some referee, who shall hear the testimony and report the same forthwith, with his opinion thereon, to such judge, who shall, if satisfied with such report, render his decision accordingly. If the commitment be made to a state hospital, the order shall be accompanied by a written statement of the judge as to the financial condition of the insane person and of the persons legally liable for his maintenance as far as can be ascertained. The superintendent of such state hospital shall be immediately notified of such commitment, and he shall, at once, make provisions for the transfer of such insane person to such hospital. The petition of the applicant, the certificate in lunacy of the medical examiners, the order directing a further hearing as provided in this section, if one be issued, and the decision of the judge or referee, and the order of commitment shall be presented at the time of the commitment to the superintendent or person in charge of the institution to which the insane person is committed, and verbatim copies shall be forwarded by such superintendent or person in charge and filed in the office of the state commission in lunacy. The relative, or committee, to whose care and custody any insane person is committed, shall forthwith file the petition, certificate and order, in the office of the clerk of the county where such order is made, and transmit a certified copy of such papers, to the commission in lunacy, and procure and retain another such certified copy. The superintendent or person in charge of any institution for the care and treatment of the insane may refuse to receive any person upon any such order, if the papers required to be presented shall not comply with the provisions of this section, or if in his judgment, such person is not insane within the meaning of this statute, or if received, such person may be discharged by the commission. No person shall be admitted to any such in-

stitution under such order after the expiration of five days from and inclusive of the date thereof.

§ 63. **Appeal from order of commitment.**— If a person ordered to be committed, pursuant to this chapter, or any friend in his behalf, is dissatisfied with the final order of a judge or justice committing him, he may, within ten days after the making of such order appeal therefrom to a justice of the supreme court other than the justice making the order, who shall cause a jury to be summoned as in case of proceedings for the appointment of a committee for an insane person, and shall try the question of such insanity in the same manner as in proceedings for the appointment of a committee. Before such appeal shall be heard, such person shall make a deposit or give a bond, to be approved by a justice of the supreme court, for the payment of the costs of the appeal, if the order of commitment is sustained. If the verdict of the jury be that such person is insane, the justice shall certify that fact and make an order of commitment as upon the original hearing. Such order shall be presented, at the time of the commitment of such insane person, to the superintendent or person in charge of the institution to which the insane person is committed, and a copy thereof shall be forwarded to the commission by such superintendent or person in charge and filed in the office thereof. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, and made upon a notice, and after a hearing, with provisions made therein for such temporary care or confinement of the alleged insane person as may be deemed necessary. If a judge shall refuse to grant an application for an order of commitment of an insane person proved to be dangerous to himself or others, if at large, he shall state his reasons for such refusal in writing, and any person aggrieved thereby may appeal therefrom in the same manner and under like conditions as from an order of commitment.

§ 64. **Costs of commitment.**— The costs necessarily incurred in determining the question of the insanity of a poor or indigent person and in securing his admission into a state hospital, and the expense of providing proper clothing for such person, in accordance with the rules and regulations adopted by the commis-

sion, shall be a charge upon the town, city or county securing the commitment. Such costs shall include the fees allowed by the judge or justice ordering the commitment to the medical examiners. If the person sought to be committed is not a poor or indigent person, the costs of the proceedings to determine his insanity and to secure his commitment, as provided in this article, shall be a charge upon his estate, or shall be paid by the persons legally liable for his maintenance. If in such proceedings, the alleged insane person is determined not to be insane, the judge or justice may, in his discretion, charge the costs of the proceedings to the person making the application for an order of commitment, and judgment may be entered for the amount thereof and enforced by execution against such person.

§ 65. **Liability for care and support of poor and indigent insane.** —All poor and indigent insane persons not in confinement under criminal proceedings, shall, without unnecessary delay, be transferred to a state hospital and there wholly supported by the state. The costs necessarily incurred in the transfer of patients to state hospitals shall be a charge upon the state. The commission shall secure from relatives or friends who are liable or may be willing to assume the costs of support of inmates of state hospitals supported by the state, reimbursement, in whole or in part. of the money thus expended.

§ 66. **Liability for the care and support of the insane other than the poor and indigent.**— The father, mother, husband, wife and children of an insane person, if of sufficient ability, and the committee or guardian of his person and estate, if his estate is sufficient for the purpose, shall cause him to be properly and suitably cared for and maintained. The commission and the superintendent of the poor of the county, and the overseer of the poor of the town where any such insane person may be, or in the city of New York, the commissioners of public charities, and in Brooklyn, the commissioners of charities and correction, may inquire into the manner in which any such person is cared for and maintained; and if, in the judgment of any of them, he is not properly or suitably cared for, may apply to a judge of a court of record for an order to commit him to a state hospital under the provisions of this article, but such order shall not be made unless the judge finds and certifies

in the order that such insane person is not properly or suitably cared for by such relative or committee, or that it is dangerous to the public to allow him to be cared for and maintained by such relative or committee. The costs and charges of the commitment and transfer of such insane person to a state hospital shall be paid by the committee, or the father, mother, husband, wife or children of such person, to be recovered in an action brought in the name of the people by the commission, the superintendent of the poor of the county, or the overseer of the poor of the town where such insane person may be, or in the city of New York in the name of the commissioners of public charities, and in the city of Brooklyn in the name of the commissioners of charities and correction.

§ 67. Duties of local officers in regard to their insane.— All county superintendents of the poor, overseers of the poor and other city, town or county authorities, having duties to perform relating to the insane poor, are charged with the duty of seeing that all poor and indigent insane persons within their respective municipalities, are timely granted the necessary relief conferred by this chapter, and, when so ordered by a judge, as herein provided, or by the commission, shall see that they are, without unnecessary delay, transferred to the proper institutions provided for their care and treatment as the wards of the state. Before sending a person to any such institution, they shall see that he is in a state of bodily cleanliness and comfortably clothed with new clothing, in accordance with the regulations prescribed by the commission. The commission may, by order, direct that any person it deems unsuitable therefor shall not be so employed or act as such attendant. Each patient shall be sent to the state hospital, within the district embracing the county from which he is committed, except that the commission may, in their discretion, direct otherwise, but private or public insane patients, for whom homeopathic care and treatment may be desired by their relatives, friends or guardians, may be committed to the Middletown State Homeopathic hospital, or to the Collins State Homeopathic hospital, from any of the counties of the state, in the discretion of the judge granting the order of commitment; and the hospital to which any patient is ordered to be sent shall, by and under the regulations made by such commission, send a trained attend-

ant to bring the patient to the hospital. Each female committed to any institution for the insane shall be accompanied by a female attendant, unless accompanied by her father, brother, husband, or son. After the patient has been delivered to the proper officers of the hospital, the care and custody of the municipality from which he is sent shall cease.

§ 68. **Duty of committee and others to care for the insane; apprehension and confinement of a dangerous insane person.**—When an insane person is possessed of sufficient property to maintain himself, or his father, mother, husband, wife or children are of sufficient ability to maintain him, and his insanity is such as to endanger his own person, or the person and property of others, the committee of his person and estate, or such father, mother, husband, wife, or children must provide a suitable place for his confinement, and there maintain him in such manner as shall be approved by the proper legal authority. The county superintendent of the poor and the overseers of the poor of towns and cities, the commissioners of public charities in the city of New York, and the commissioners of charities and correction in the city of Brooklyn, are required to see that the provisions of this section are carried into effect in the most humane and speedy manner. Upon the refusal or neglect of a committee, guardian or relative of an insane person to cause him to be confined, as required in this chapter, the officers named in this section shall apply to a judge of a court of record of the city or county, or to a justice of the supreme court of the judicial district in which such insane person may reside or be found, who, upon being satisfied, upon proper proofs, that such person is dangerously insane and improperly at large, shall issue a precept to one or more of the officers named, commanding them to apprehend and confine such insane person in some comfortable and safe place; and such officers in apprehending such insane person shall possess all the powers of a peace officer executing a warrant of arrest in a criminal proceeding. Unless an order of commitment has been previously granted, such officers shall forthwith make application for the proper order for his commitment to the proper institution for the care, custody and treatment of the insane, as authorized by this chapter, and if such order is granted, such officer shall take the necessary legal steps to have him transferred to such institution. In no case shall any such

insane person be confined in any other place than a state hospital or duly licensed institution for the insane, for a period longer than ten days, nor shall such person be committed as a disorderly person to any prison, jail or lockup for criminals, unless he be violent and dangerous, and there is no other suitable place for his confinement, nor shall he be confined in the same room with a person charged with or convicted of crime. Any person apparently insane, and conducting himself in a manner which in a sane person would be disorderly, may be arrested by any peace officer and confined in some safe and comfortable place until the question of his sanity be determined, as prescribed by this chapter. The officer making such arrest shall immediately notify the superintendent of the poor of the county, or the overseers of the poor of the town or city, or, in the city of New York, the commissioners of public charities, or, in the city of Brooklyn, the commissioners of charities and correction, who shall forthwith take proper measures for the determination of the question of the insanity of such person.

§ 69. **Patients admitted under special agreement.**— The managers of a state hospital may authorize the superintendent to admit thereto, under special agreement, insane patients, who are residents of the state, other than poor and indigent insane persons, when there is room for such insane therein. But no patient shall be permitted to occupy more than one room in any state hospital, nor shall any patient, his friends or relatives, be permitted to pay for his care and treatment therein a sum greater than ten dollars a week. Such patients, when so received, shall be subject to the general rules and regulations of the hospital. The amount agreed upon for the maintenance of such insane persons in a state hospital, shall be secured by a properly executed bond, and bills therefor shall be collected monthly. The commission may appoint agents, whose duty it shall be to secure from relatives and friends who are liable therefor, or who may be willing to assume the cost of support of any of the inmates of state hospitals as are being supported by the state, reimbursement in whole or in part of the money so expended. The compensation of each agent shall not exceed five dollars a day, and the necessary traveling and other incidental expenses incurred by him, to be approved by the comptroller.

§ 70. Entries in case book.— Every superintendent or other person in charge of an institution for the care and treatment of the insane, shall, within three days after the reception of a patient, make, or cause to be made, a descriptive entry of such case in a book exclusively set apart for that purpose. He shall also make or cause to be made entries from time to time, of the mental state, bodily condition and medical treatment of such patient during the time such patient remains under his care, and in the event of the discharge or death of such person, he shall state in such case book the circumstances thereof, and make such other entries at such intervals of time and in such form as may be required by the commission.

§ 71. Transfer of patients when hospital is overcrowded.— When the building of any state hospital shall become overcrowded with patients, or the number of buildings shall be reduced by fire, or other casualties, or for other cause, the commission may, in its discretion, cause the transfer of patients therefrom, or direct that patients required to be sent thereto, be transferred to another state hospital, where they can be conveniently received, or make, in special emergencies, temporary provision for their care, preference to be given in such transfers to a hospital in an adjoining rather than in a remote district. The expenses of such transfer shall be chargeable to the state, and the bills for the same, when approved by the commission, shall be paid by the treasurer of the state, on the warrant of the comptroller, out of any moneys provided for the support of the insane.

§ 72. Investigation into the care and treatment of the insane.— When the commission has reason to believe that any person adjudged insane is wrongfully deprived of his liberty, or is cruelly, negligently or improperly treated, or inadequate provision is made for his skillful medical care, proper supervision and safe keeping, it may ascertain the facts, or may order an investigation of the facts by one of its members. It, or the commissioner conducting the proceeding, may issue compulsory process for the attendance of witnesses and the production of papers, and exercise the powers conferred upon a referee in the supreme court. If the commission deem it proper, it may issue an order directed to any or all institutions, directing and providing for

such remedy or treatment, or both, as shall be therein specified. If such order be just and reasonable, and be approved by a justice of the supreme court, who may require notice to be given of the application for such approval, it shall be binding upon any and all institutions and persons to which it is directed, and any willful disobedience of such order shall be a criminal contempt and punishable as such. Whenever the commission shall undertake an investigation into the general management and administration of any institution for the insane, it may give notice to the attorney-general of any such investigation, and the attorney-general shall appear personally or by deputy and examine witnesses who may be in attendance. The commission, or any member thereof, may at any time visit and examine the inmates of any county or city alms-house, to ascertain if insane persons are kept therein.

§ 73. **Habeas corpus.**—Any one in custody as an insane person is entitled to a writ of habeas corpus, upon a proper application made by him or some friend in his behalf. Upon the return of such writ, the fact of his insanity shall be inquired into and determined. The medical history of the patient, as it appears in the case book, shall be given in evidence, and the superintendent or medical officer in charge of the institution wherein such person is held in custody, and any proper person, shall be sworn touching the mental condition of such person.

§ 74. **Discharge of patients.**— The superintendent of a state hospital, on filing his written certificate with the secretary of the board of managers, may discharge any patient, except one held upon an order of a court or judge having criminal jurisdiction in an action or proceeding arising out of a criminal offense at any time, as follows:

1. A patient who, in his judgment, is recovered.

2. Any patient who is not recovered but whose discharge, in the judgment of the superintendent, will not be detrimental to the public welfare, or injurious to the patient; provided, however, that before making such certificate, the superintendent shall satisfy himself, by sufficient proof, that friends or relatives of the patient are willing and financially able to receive and properly care for such patient after his discharge. When the superintendent is unwilling to certify to the discharge of an unrecovered patient upon request, and so certifies in writ-

ing, giving his reasons therefor, any judge of a court of record in the judicial district in which the hospital is situated may, upon such certificate and an opportunity of a hearing thereon being accorded the superintendent, and upon such other proofs as may be produced before him, direct, by order, the discharge of such patient, upon such security to the people of the state as he may require, for the good behavior and maintenance of the patient. The certificate and the proof and the order granted thereon shall be filed in the clerk's office of the county in which the hospital is situated, and a certified copy of the order in the hospital from which the patient is discharged. The superintendent may grant a parole to a patient not exceeding thirty days, under general conditions prescribed by the commission. The commission may, by order, discharge any patient in its judgment improperly detained in any institution. A poor and indigent patient discharged by the superintendent, because he is an idiot, or an epileptic, not insane, or because he is not a proper case for treatment within the meaning of this chapter, shall be received and cared for, by the superintendent of the poor or other authority having similar powers, in the county from which he was committed. A patient, held upon an order of a court or judge having criminal jurisdiction, in an action or proceeding arising from a criminal offense, may be discharged upon the superintendent's certificate of recovery, approved by any such court or judge.

§ 75. **Clothing and money to be furnished discharged patients.** —No patient shall be discharged from a state hospital without suitable clothing adapted to the season in which he is discharged; and if it can not be otherwise obtained, the steward shall, upon the order of the superintendent, furnish the same, and money not exceeding twenty-five dollars, to defray his necessary expenses until he can reach his relatives or friends, or find employment to earn a subsistence.

§ 76. **Transfer of nonresident patients.**— If an order be issued by any judge, committing to a state hospital a poor or indigent person, who has not acquired a legal settlement in this state, the commission in lunacy shall return such insane person, either before or after his admission to a state hospital, to the country or state to which he belongs, and for such purpose may expend

so much of the money appropriated for the care of the insane as may be necessary, subject to the audit of the comptroller.

§ 77. **Insane Indians.**— Poor and indigent insane Indians living within this state or upon any of the Indian reservations shall be committed to, confined in, and discharged from the state hospitals for the insane in the same manner and under the same rules and regulations as other poor and indigent insane persons; and all the provisions of this chapter shall apply to the Indians residing within this state the same as to other persons.

ARTICLE IV.

State Hospital for Insane Criminals.

Section 90. Establishment and purposes of the Matteawan State hospital.
91. Medical superintendent.
92. Medical superintendent as treasurer of the hospital.
93. Salaries of resident officers.
94. Powers and duties of medical superintendent and assistants.
95. Monthly estimates.
96. Power of removal.
97. Transfer of insane convicts to the Matteawan State hospital.
98. Disposal of insane convicts after expiration of term of imprisonment.
99. Convicts on recovery, to be transferred to prison.
100. Certificate of conviction to be delivered to medical superintendent and copy filed.
101. Transfer from state hospital to Matteawan State hospital.
102. Authority to recover for the support of patients.
103. Tenure of office.
104. Communications with patients.

Section 90. **Establishment and purposes of the Matteawan State hospital.**—The grounds, buildings and property located at Matteawan, in the county of Dutchess, and used for the purposes of the hospital for insane criminals, are hereby declared to be the Matteawan State hospital, to be used for the purpose of holding

in custody and caring for such insane persons as may be committed to the said institution by courts of criminal jurisdiction, and for such convicted persons who may be declared insane while undergoing sentence at any of the various penal institutions of the state.

§ 91. **Medical superintendent.**— The superintendent of state prisons shall, whenever there is a vacancy, appoint a medical superintendent for the Matteawan State hospital, who shall be a well-educated physician of at least five years' actual experience in a hospital for the care and treatment of the insane. The superintendent of state prisons, subject to the approval of the state commission in lunacy, shall make by-laws and regulations for the government of the hospital and the management of its affairs.

§ 92. **Medical superintendent as treasurer of the hospital.**— The medical superintendent shall be the treasurer of the hospital, and before entering upon his duties, shall file with the comptroller of the state his undertaking to the people with sureties to be approved by the superintendent of state prisons, to the effect that he will faithfully perform his trust as such treasurer. He shall have the custody of the moneys, securities and obligations belonging to the hospital, and shall open with some bank, in the vicinity of the hospital, to be selected with the approval of the comptroller, an account in his name as such medical superintendent, and immediately deposit in such bank all moneys received by him as such medical superintendent and treasurer, and shall draw therefrom only for the use of the hospital and in the manner provided by the by-laws and upon the order of the steward, specifying the object of each payment. He shall keep a full and accurate account of the receipts and payments, as directed by the by-laws, and of such other matters as the superintendent of state prisons and the state commission in lunacy may prescribe, and balance all his accounts, annually, on the thirtieth day of September, and within ten days thereafter deliver to the superintendent of state prisons, a statement thereof and an abstract of such receipts and payments for the past year. His books and vouchers shall at all times be open to the inspection of the superintendent of state prisons and the commission, and they may at any time require of him a state-

ment of his accounts and of the funds and property in his custody.

§ 93. **Salaries of resident officers.**— The superintendent of state prisons shall, from time to time, determine the annual salaries and allowances of the resident officers, provided they do not in the aggregate exceed twelve thousand dollars; and the same shall be paid quarterly, on the last days of March, June, September and December, by the treasurer of the state, on the warrant of the comptroller, out of any moneys in the treasury not otherwise appropriated, to the medical superintendent, on his presenting a bill of particulars thereof signed by the steward, and properly certified by such medical superintendent.

§ 94. **Powers and duties of medical superintendent and assistants.**— The medical superintendent shall be the chief executive officer of the hospital and shall:

1. Have the general superintendence of the building and grounds, together with their furniture, fixtures and stock, and the direction and control of all persons therein, subject to the rules and regulations adopted by the superintendent of state prisons, with power to assign their respective duties.

2. Appoint such number of assistant physicians, not to exceed one for each two hundred inmates or fraction thereof, as the necessities of the institution may require, also a steward and matron, all of whom and the medical superintendent, shall reside in the hospital, and shall be known as the resident officers thereof.

3. Appoint such and so many attendants and other subordinate employes as he may think proper and necessary for the economical and efficient administration of the affairs of the hospital, and prescribe their several duties and places, and fix, with the approval of the superintendent of state prisons, their compensation, and discharge any of them at his sole discretion; but in every case of discharge, so occurring, he shall, forthwith, enter the same with the reasons therefor, under an appropriate heading, in one of the record books of the hospital.

4. Give, from time to time, such orders and instructions as he may deem best calculated to insure good conduct, fidelity and economy in every department of labor and expense.

5. Maintain salutary discipline among all who are employed by the institution, and enforce strict compliance with all instruc-

tions and orders given by him, and uniform obedience to all the rules and regulations of the hospital.

6. Cause full and fair accounts and records of all his doings, and of the entire business and operations of the institution to be kept regularly, from day to day, in books provided for that purpose, in the manner and extent prescribed in the by-laws.

7. See that all accounts and records are fully made up to the last day of September in each year, and present the principal facts and results, with his report thereon, to the superintendent of state prisons, within forty days thereafter. The resident officers, before entering upon their duties as such, shall severally take and file in the office of the secretary of state, the constitutional oath of office. The first assistant physician shall perform the duties and be subject to the responsibilities of the superintendent in his sickness or absence. The steward may personally purchase any supplies for the use of such hospital, but only in the name of the medical superintendent, and in each instance by his direction and not otherwise.

§ 95. **Monthly estimates.**— The medical superintendent shall cause an estimate to be made monthly, in accordance with forms to be approved by the state comptroller, of all moneys necessary for the support and maintenance of the hospital, which may be required to supplement the deficiencies in the earnings thereof. Such estimate shall be submitted to and examined by the superintendent of state prisons, who, if he is satisfied that it is correct, and that the articles named therein are actually needed for the support and maintenance of the hospital, shall certify to the same, and on production of such estimate so certified, to the comptroller, he shall draw his warrant on the state treasurer for the amount thereof, and the state treasurer shall pay such amount to the medical superintendent of the hospital, out of any money in the treasury appropriated for the support of such hospital.

§ 96. **Power of removal.**— The superintendent of state prisons may remove the medical superintendent, for cause shown, and an opportunity to such superintendent to be heard thereon, and such officer shall not be reappointed to the office of medical superintendent, or to any other position in said hospital.

§ 97. **Transfer of insane convicts to the Matteawan State Hospital.**— Whenever the physician of either of the state prisons,

county penitentiaries, or of the state reformatory or other penal institutions, shall report in writing to the warden or other officer in charge thereof, that any convict confined therein is, in his opinion, insane, such warden or other officer shall apply to a judge of a court of record to cause an examination to be made of such person by two legally qualified examiners in lunacy, other than a physician connected with such state prison, penitentiary, reformatory or penal institution, qualified to act as medical examiners in lunacy. Such examiners shall be designated by the judge to whom the application is made. Such examiners, if satisfied, after a personal examination, that such convict is insane, shall make a certificate to such effect in the form and manner prescribed by this chapter for the commitment of insane persons to state hospitals. Such warden or other person in charge shall apply to a judge of a court of record for an order transferring such convict to the Matteawan State hospital, accompanying such application with such certificate in lunacy. Such judge, if satisfied that such convict is insane, shall issue such order of transfer, and such warden or other officer in charge shall thereupon cause such convict to be transferred to the Matteawan State Hospital and delivered to the medical superintendent thereof. At the time of such transfer, the certificate in lunacy and order of transfer shall be presented to such medical superintendent, and a copy thereof shall be placed on file in the office of the superintendent of state prisons. Such insane convict shall be received into such hospital and retained there until legally discharged. Such warden, or other officer in charge, before transferring such insane convict, shall see that he is bodily clean, and is provided with a new suit of clothing similar to that furnished to convicts on their discharge from prison. The costs necessarily incurred in determining the question of insanity, including the fees of the medical examiners, shall be a charge upon the state or the municipality at whose expense the institution from which the transfer is made or sought to be made is maintained.

§ 98. **Disposal of insane convicts after expiration of term of imprisonment.**— Whenever any convict in the Matteawan State Hospital, under and by virtue of this act, shall continue to be insane at the expiration of the term for which he was sentenced, he may be retained therein until he has recovered or is otherwise

legally discharged. The medical superintendent of such hospital may discharge and deliver any patient whose sentence has expired, and who is still insane, but who, in the opinion of the superintendent is reasonably safe to be at large, to his relatives or friends who are able and willing to comfortably maintain him, without further public charge; and such patient may, in the discretion of the medical superintendent, be provided with the whole or a portion of such allowances as are hereinafter granted to recovered convicts. Whenever any convict, who, by reason of his insanity, shall have been retained beyond the date of the expiration of his sentence shall recover, he may be discharged by the medical superintendent, and such convict shall be entitled to ten dollars in money, suitable clothing and a railroad ticket to the county of his conviction or to such other place as he may designate at no greater distance. Similar allowances shall be made to patients committed by order of a court and who may be discharged. Any convict in the Matteawan State Hospital, whose term of imprisonment has expired by commutation or otherwise, and who is not recovered may, upon an order of the commission in lunacy, be transferred to any institution for the insane.

§ 99. Convicts on recovery to be transferred to prison.— Whenever any convict, who shall have been confined in such hospital as an insane person, shall have recovered before the expiration of his sentence, and the medical superintendent thereof shall so certify in writing to the agent and warden, or other officer in charge of the institution, from which such convict was received or to which the superintendent of state prisons may direct that he be transferred, such convict shall forthwith be transferred to the institution from which he came by the medical superintendent of the hospital, or, if received from one of the state prisons, to such state prison as the superintendent of state prisons may direct; and the agent and warden or other officer in charge of such institution shall receive such convict into such institution, and shall, in all respects, treat him as when originally sentenced to imprisonment. Any inmate not a convict, held upon an order of a court or judge, in a criminal proceeding, may be discharged therefrom, upon the superintendent's certificate of recovery, made to and approved by such court or judge.

§ 100. **Certificate of conviction to be delivered to medical superintendent and copy filed.**— Whenever any convict shall be transferred to the Matteawan State Hospital, the agent and warden or other officer in charge of the prison, penitentiary, reformatory or other penal institution from which such convict is transferred, shall cause a correct copy of the original certificate of conviction of such convict to be filed in the office of the warden or officer in charge, and shall deliver the original certificate to the medical superintendent of such hospital; and whenever any such convict shall be transferred to any penal institution from such hospital, as hereinbefore provided, the medical superintendent shall deliver to the agent and warden, or other officer in charge of such institution, such original certificate, which shall be filed in the clerk's office of the same.

§ 101. **Transfer from state hospitals to Matteawan State Hospital.**— The commission in lunacy may, by order in writing, transfer any insane inmate of a state hospital, committed thereto upon the order of a court of criminal jurisdiction, to the Matteawan State Hospital, and the county in which the criminal charge arose or conviction or acquittal was had, shall defray all the expenses of such person while at the Matteawan State Hospital and the expenses of returning him to such county.

§ 102. **Authority to recover for the support of patients.**— The medical superintendent of the hospital is hereby authorized to recover for the support of any patient therein, chargeable under the law to either counties or penitentiaries, in an action to be brought, in the name of the people of the state of New York, against the county or penitentiary, for the maintenance of said patient.

§ 103. **Tenure of office.**— Nothing in this article shall be construed to affect the tenure of office of any of the present officers of the hospital.

§ 104. **Communications with patients.**— No person not authorized by law or by written permission from the superintendent of state prisons shall visit the Matteawan State hospital, or communicate with any patient therein without the consent of the medical superintendent; nor without such consent shall any person bring into or convey out of the Matteawan State hospital any letter or writing to or from any patient; nor shall any letter or writing be delivered to a patient, or if written by a patient,

be sent from the Matteawan State hospital until the same shall have been examined and read by the medical superintendent or some other officer of the hospital duly authorized by the medical superintendent. But communications addressed by such patient to the county judge or district attorney of the county from which he was sentenced, shall be forwarded, after examination by such medical superintendent, to their destination.

ARTICLE V.

Laws Repealed; When to Take Effect.

Section 110. Laws repealed.
111. When to take effect.

Section 110. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 111. **When to take effect.**— This chapter shall take effect on July first, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

Revised Statutes, pt. 1, ch. 20, tit. 3..... All.

LAWS OF—	Chapter.	Sections.
1838.....	218.....	All.
1874.....	446.....	All, except tit. 1, §§ 21, 22, 26.
1875.....	264.....	All.
1875.....	574.....	All.
1876.....	121.....	All.
1878.....	47.....	All.
1878.....	86.....	All.
1879.....	45.....	All.
1879.....	280.....	All.
1880.....	61.....	1.
1880.....	164.....	All.
1881.....	49.....	All.
1881.....	190.....	All.
1883.....	193.....	All.
1884.....	289.....	All.
1884.....	515.....	All.

	Ch. 28, G. L.	L. 1896, ch. 545.
LAWS OF—	Chapter.	Sections.
1885	178	All.
1885	462	All.
1886	215	All.
1886	318	All.
1886	545	All.
1887	343	All.
1887	375	All.
1887	629	All.
1888	451	All.
1889	56	All.
1889	283	All.
1889	427	All.
1890	126	All.
1890	132	All.
1890	243	All.
1890	273	All.
1891	335	All.
1893	81	All.
1893	214	All.
1893	247	All.
1893	323	All.
1893	614	All.
1894	707	All
1895	172	All.
1895	628	All, except §§ 2, 8.
1895	855	All.

THE LIQUOR TAX LAW,

As amended to the commencement of the session of 1897.

L. 1896, ch. 112 — An act in relation to the traffic in liquors, and for the taxation and regulation of the same, and to provide for local option, constituting chapter twenty-nine of the general laws.

[Became a law March 28, 1896, taking effect immediately.]

CHAPTER XXIX OF THE GENERAL LAWS.

THE LIQUOR TAX LAW.

Section 1. Short title.
2. Definitions.
3. Abolition of boards of excise, and their powers and duties.
4. The continuance of licenses.
5. The duties of existing boards of excise.
6. State commissioner of excise.
7. Office of state commissioner.
8. Deputy commissioner; secretary, clerks.
9. Special deputy commissioner in certain counties.
10. Special agents; attorneys.
11. Excise taxes upon the business of trafficking in liquors.
12. Tax, when due and payable.
13. Officers to whom the tax is to be paid and how distributed.
14. Compensation of county treasurers.
15. Books and blanks to be furnished by state commissioner of excise.
16. Local option to determine whether liquor shall be sold under the provisions of this act.
17. Statements to be made upon application for liquor tax certificate.
18. Bonds to be given.
19. The payment of the tax and issuing of the tax certificate.
20. Form of liquor tax certificate.
21. Posting liquor tax certificate.
22. Restrictions on the traffic in liquors in connection with other business.

Section 23. Persons who shall not traffic in liquors and persons to whom a liquor tax certificate shall not be granted.
24. Places in which traffic in liquor shall not be permitted.
25. Surrender and cancellation of liquor tax certificates.
26. Changing place of traffic.
27. Voluntary sale of liquor tax certificate.
28. Certiorari upon refusal to issue or transfer liquor tax certificates; revocation and cancellation of liquor tax certificates.
29. Injunction for selling without liquor tax certificate.
30. Persons to whom liquor shall not be sold or given.
31. Other illegal sales and selling.
32. Sales and pledges; when void.
33. Persons liable for violation of this act.
34. Penalties for violation of this act.
35. Jurisdiction of courts.
36. Collection of fines and penalties and forfeiture of bonds.
37. Duties of public officers, in relation to complaints and prosecutions under this act.
38. Penalties for neglect of public officers to perform their duty under this act.
39. Recovery of damages in a civil action.
40. Intoxication in a public place.
41. Employment of persons addicted to intoxication by common carriers.
42. Violations of this act generally.
43. Distribution of copies of this act by the secretary of state.
44. Laws repealed; saving clause.
45. When to take effect.

SECTION 1. **Short title.**— This chapter shall be known as the liquor tax law.

Previous to the enactment of this statute, the laws relating to the regulation of the liquor traffic had been codified in chapter 401 of the Laws of 1892, which was materially modified and changed by the amendatory act, chapter 480, of the Laws of 1893.

This law is drawn in the form of a tax rather than an excise, and is the first statute of this State which was not enacted to regulate the traffic. For full discussion see index.

The right of the Legislature to regulate the sale of intoxicating liquors within the State has always been recognized.

As to whether license is a contract or permit, Board of Excise v. Barrie, 34 N. Y., 657.

As to power of Legislature over traffic, Bertholf v. O'Reilly, 74 N. Y., 509. Constitutionality of prohibition of traffic, Wynehamer v. People, 13 N. Y., 378.

§ 2. **Definitions.**— The term "liquors," as used in this act, shall include and mean all distilled or rectified spirits, wine, fermented and malt liquors. A sale of liquor of less than five wine gallons shall be "trafficking in liquors," within the pro-

visions of this act. An association within the meaning of this act is any combination of two or more persons not incorporated nor constituting a copartnership.

This provision is the first attempt in this State to define "liquor" in a general law.

§ 3. **The abolition of boards of excise and their powers and duties.**— From and after the thirtieth day of April, eighteen hundred and ninety-six, all boards of excise in the state of New York are abolished, and the rights, duties and powers of all boards of excise and of all commissioners of excise, and of the clerks and all other employes, shall cease and terminate from that date. No license to sell liquor shall be granted after the passage of this act by any such board of excise, to extend beyond the thirtieth day of April, eighteen hundred and ninety-six. The fee for such license to so expire shall be in proportion to the fee for one year.

Effect of subsequent legislation on terms of office of commissioners of excise appointed under former statute, People ex rel. Kennedy et al. v. Lahr et al., 71 Hun, 271.

§ 4. **The continuance of licenses.**— Every license heretofor lawfully granted by a board of excise, which is valid when this act takes effect, shall be, and remain, valid for the term for which it was granted, except as herein provided, unless sooner cancelled under the provisions of the law under which it was granted, and the rights and liabilities of the holder thereof during such term shall be governed by the laws in force immediately prior to the taking effect of this act, except as otherwise expressly provided in this act, but such license shall cease, determine and be void from and after the thirtieth of June, eighteen hundred and ninety-six; and the tax herein provided to be assessed shall not be levied or collected upon the business of any corporation, association, copartnership or person holding an unexpired license, until the time lawfully fixed for the expiration of such license, or its termination as herein provided unless such license shall be sooner cancelled. When a license is terminated on the thirtieth day of June, eighteen hundred and ninety-six, as above provided, the holder of such license shall be entitled to receive and recover from the town or city in which

such license was granted, such proportion of the whole license fee paid therefor, as the remainder of the time for which such license would otherwise have run, shall bear to the whole period for which it was granted, and the same shall be paid by such town or city on demand.

Power of Legislature to terminate licenses; Board of Excise v. Barrie, 34 N. Y., 657.

§ 5. **The duties of existing boards of excise.** — On the fifteenth day of April, eighteen hundred and ninety-six, the several boards of excise in the several towns and cities of the state shall report in detail to the county treasurer of the county in which such board may be, except in counties containing a city of the first class, and in those counties to the special deputy commissioner for such county, the names of all corporations, associations, copartnerships, or persons who at that date hold a license from such board, the kind of license held, the date when the same was granted, the date of the termination thereof, the amount paid therefor, the name and residence of each surety on the bond of each licensee, and the place where business is carried on by such corporation, association, copartnership or person, and the names of all persons against whom proceedings are pending for a violation of the excise law, and shall on the thirtieth day of April, eighteen hundred and ninety-six, make a supplementary report to such county treasurer or special deputy commissioner in like form, covering all business transacted by them after the fifteenth day of April. They shall within thirty days after said thirtieth day of April deposit with the county treasurer of the county, or in the counties containing a city of the first class, with the special deputy commissioner for such county, all books of record and accounts, maps and scrap books that have been kept by such board. Failure to make the report required by this section, or to deposit the books of record and accounts, maps and scrap books as required shall subject the offending members of such board of excise to a penalty of five hundred dollars, to be collected by due process of law by the county treasurer of the county elsewhere than in the counties containing a city of the first class, and there, by the special deputy commissioner for such county.

§ 6. **State commissioner of excise.**— Within ten days after the passage of this act, the governor by and with the advice and consent of the senate, shall appoint a state commissioner of excise who shall hold his office for the term of five years, and until his successor is appointed and has qualified. A commissioner shall in like manner be appointed upon the expiration of the term. If a vacancy occurs in the office of a commissioner it shall be filled in like manner for the residue of the term. The commissioner shall execute and file with the comptroller of the state a bond to the people of the state in the sum of twenty thousand dollars, with sureties to be approved by the comptroller, conditioned for the faithful performance of his duties, and for the due accounting for all moneys received by him as such commissioner. The commissioner shall receive an annual salary of five thousand dollars, payable monthly and he shall also be paid his necessary expenses when absent from the city of Albany in the discharge of his duties not exceeding annually the sum of twelve hundred dollars, which expenses shall be audited by the comptroller.

§ 7. **Office of state commissioner.** — The trustees or other officers having, by law, the custody of public buildings at the state capitol, shall assign to the commissioner rooms therein, for conducting the business of his department. The commissioner shall from time to time furnish the necessary furniture, stationery, and other proper conveniences for the transaction of such business, the expenses of which shall be paid by the treasurer on the certificate of the commissioner and the warrant of the comptroller.

§ 8. **Deputy commissioner; secretary; clerks.** — The state commissioner of excise shall appoint a deputy commissioner who shall receive an annual salary of four thousand dollars payable monthly, and his necessary traveling and other expenses when absent from the city of Albany in the discharge of his official duties, not exceeding annually the sum of twelve hundred dollars, to be audited by the comptroller. During the absence or inability to act of the state commissioner, the deputy shall have and exercise all the powers conferred by this chapter upon the state commissioner. The deputy commissioner shall, if required by the state commissioner, give a bond to the people of the state in such sum and with such sureties as shall be approved by the commissioner.

The commissioner shall appoint a secretary, who shall receive an annual salary of two thousand dollars, payable monthly, and a financial clerk, who shall receive an annual salary of eighteen hundred dollars payable monthly. Such clerk, under the direction of the commissioner, shall have charge of the disbursement of the moneys appropriated for the expenses of the office, and shall, if required by the commissioner, give a bond to the people of the state, in such sum and with such sureties as shall be approved by the commissioner. Each of the officers provided for by this section, shall take and subscribe the constitutional oath of office before entering upon the performance of his duties. Each of such officers may be removed by the commissioner, who may in like manner appoint their successors. The commissioner may also appoint such clerical force in his office as may be necessary.

§ 9. **Special deputy commissioners in certain counties.**—The state commissioner of excise shall appoint a special deputy in each of the counties containing a city of the first class, who shall hold office during his pleasure. The special deputy for the county of New York shall receive a salary of four thousand dollars. for the county of Kings, three thousand dollars, and for the county of Erie, two thousand dollars. Such salaries shall be payable monthly. Each of such special deputies shall take and subscribe the constitutional oath of office, and if required by the commissioner, execute and file in the office of the comptroller, a bond to the people of the state, in such sum and with such sureties as shall be approved by the commissioner. The commissioner shall appoint in the office of each of such deputies such clerical force as may be necessary, or as may be provided by law. Each of such deputies shall be furnished with an office, and furniture, fixtures and appliances therefor, as may be necessary. They shall perform such duties as may be required by the commissioner, or as may be provided by law. Each of such special deputies shall perform, in the county for which he is appointed, all the duties heretofore conferred upon boards of excise or excise commissioners in such county under any law repealed by this act, during the continuance of any license heretofore granted as to the transfer, surrender or revocation thereof, or as to prosecuting offenses for violations of law under any law existing immediately prior to the passage of this act.

§ 10. **Special agents; attorneys.** — The state commissioner of excise shall appoint not more than sixty special agents, each of whom shall receive an annual salary of twelve hundred dollars, payable monthly, together with the necessary expenses incurred in the performance of the duties of his office. Each of such special agents shall, if required by the commissioner, execute and file in the office of the comptroller, a bond to the people of the state in such sum and with such sureties as the commissioner shall require, conditioned for the faithful performance of the duties of his office. Such special agents shall be deemed the confidential agents of the state commissioner, and shall, under the direction of the commissioner and as required by him, investigate all matters relating to the collection of liquor taxes and penalties under this act and in relation to the compliance with law by persons engaged in the traffic in liquors. Any such special agent may enter any place where liquors are sold at any time when the same is open, and may examine any liquor tax certificate granted or purported to have been granted in pursuance of law. He may investigate any other matters in connection with the sale of liquor and shall make complaints of violations of this act as provided for other officers in section thirty-seven hereof. He shall be liable for penalties as provided in section thirty-eight of this act, for neglect by public officers. The state commissioner of excise may designate for any county in which there is not a special deputy commissioner, one of such special agents to perform the duties conferred upon special deputies in relation to the transfer, surrender or revocation of a license existing at the time this act takes effect and as to prosecuting violations of laws repealed by this act. The state commissioner may designate in any county of the state an attorney or attorneys, to act with the special deputy of such county or a special agent, designated by the commissioner as provided by this section, in the prosecution of all actions or proceedings under any law repealed by this chapter and pending when this chapter shall take effect, who shall have such authority as was conferred by law upon attorneys for boards of excise under the laws in force immediately prior to the passage of this chapter. The state commissioner may likewise designate and appoint an attorney in any county of the state to act with the special deputy, special

agent or county treasurer, in the prosecution or defense of any action or proceeding brought under the provisions of this act. They shall be paid by the state treasurer on the warrant of the comptroller, such compensation as shall be agreed upon by the state commissioner.

§ 11. **Excise taxes upon the business of trafficking in liquors.**— Excise taxes upon the business of trafficking in liquors shall be of four grades and assessed as follows:

Subdivision 1. Upon the business of trafficking in liquors to be drunk upon the premises where sold, or which are so drunk, whether in a hotel, restaurant, saloon, store, shop, booth or other place, or in any outbuilding, yard or garden appertaining thereto or connected therewith, there is assessed an excise tax to be paid by every corporation, association, copartnership or person engaged in such traffic, and for each such place where such traffic is carried on by such corporation, association, copartnership or person, if the same be in a city having by the last state census a population of fifteen hundred thousand or more, the sum of eight hundred dollars; if in a city having by said census a population of less than fifteen hundred thousand, but more than five hundred thousand, the sum of six hundred and fifty dollars, if in a city having by said census a population of less than five hundred thousand, but more than fifty thousand, the sum of five hundred dollars; if in a city or village having by said census a population of less than fifty thousand, but more than ten thousand, the sum of three hundred and fifty dollars; if in a city or village having by said census a population of less than ten thousand but more than five thousand, the sum of three hundred dollars; if in a village having by said census a population of less than five thousand, but more than twelve hundred, the sum of two hundred dollars; if in any other place, the sum of one hundred dollars. The holder of a liquor tax certificate under this subdivision is entitled also to traffic in liquors as though he held a liquor tax certificate under subdivision two of this section, subject to the provisions of section sixteen of this act.

Subdivision 2. Upon the business of trafficking in liquors in quantities less than five wine gallons, no part of which shall be drunk on the premises where sold, or in any outbuilding, yard,

booth or garden appertaining thereto, or connected therewith, there is assessed an excise tax to be paid by every corporation, association, copartnership or person engaged in such traffic, and for each such place where such traffic is carried on by such corporation, association, copartnership or person, if the same be in a city having by the last state census a population of fifteen hundred thousand or more, the sum of five hundred dollars; if in a city having by the said census a population of less than fifteen hundred thousand, but more than five hundred thousand, the sum of four hundred dollars; if in a city having by said census a population of less than five hundred thousand, but more than fifty thousand, the sum of three hundred dollars; if in a city or village having by said census a population of less than fifty thousand, but more than ten thousand, the sum of two hundred dollars; if in a village having by said census a population of less than ten thousand, but more than five thousand, the sum of one hundred dollars; if in a village having by said census a population of less than five thousand, but more than twelve hundred, the sum of seventy-five dollars; if in any other place, the sum of fifty dollars. The holder of a liquor tax certificate under this subdivision, who is a duly licensed pharmacist, and the corporation, association or copartnership of which he is a member is subject to the provisions of exception one of section thirty-one of this act, and to the provisions of section sixteen of this act.

Subdivision 3. Upon the business of trafficking in liquors by a duly licensed pharmacist, which liquors can only be sold upon the written prescription of a regularly licensed physician, signed by such physician, which prescription shall state the date of the prescription, the name of the person for whom prescribed, and shall be preserved by the vendor, pasted in a book kept for that purpose, and be but once filled, and which liquors shall not be drunk on the premises where sold, or in any outbuilding, yard, booth or garden appertaining thereto, or connected therewith, there is assessed an excise tax to be paid by such duly licensed pharmacist or the corporation, association or copartnership of which he is a member, engaged in such traffic, and for each such place where such traffic is carried on by such pharmacist, or by such corporation, association or copartnership of which he is a member, if the same be in a city having by the last state census

a population of fifteen hundred thousand or more, the sum of one hundred dollars; if in a city having by the said census a population of less than fifteen hundred thousand, but more than five hundred thousand, the sum of seventy-five dollars; if in a city having by said census a population of less than five hundred thousand, but more than fifty thousand, the sum of fifty dollars; if in a city or village having by said census a population of less than fifty thousand, but more than ten thousand, the sum of thirty dollars; if in a city or village having by said census a population of less than ten thousand, but more than five thousand, the sum of twenty dollars; if in a village having by said census a population of less than five thousand, but more than twelve hundred, the sum of fifteen dollars; if in any other place, the sum of ten dollars. Nothing however in this subdivision shall be construed as prohibiting the sale without prescription of alcohol to be used for medicinal, mechanical or chemical purposes.

Subdivision 4. Upon the business of trafficking in liquors upon any car, steamboat or vessel within this state, to be drunk on such car or on any car connected therewith, or on such steamboat or vessel, or upon any boat or barge attached thereto, or connected therewith, there is assessed an excise tax, to be paid by every corporation, association, copartnership or person engaged in such traffic and for each car, steamboat or vessel upon which traffic is carried on, the sum of two hundred dollars.

When the population of a city or village is not shown by the last state census, it shall be determined for the purposes of this act by the last United States census, and if not so shown by reason of the incorporation of a new city or village, the state commissioner of excise is authorized and directed to cause an enumeration of the inhabitants to be taken in such city or village. If, since the latest state enumeration was taken, the boundaries of a city have been changed by the addition of territory not in the same judicial district, such annexed territory shall not be deemed to be a part of such city for the purposes of this act; but such annexed territory shall be deemed to be a town, and all the provisions of this act shall be applicable to such annexed territory the same as if it had not been so annexed, except that all the money which would otherwise be

payable to the town under this act, shall be paid to the city to which such territory was annexed.

Subdivision 1 includes trafficking in liquor under what was known as hotels, saloons, and ale and beer licenses under subdivisions 1, 2 and 3, of section 19 of the former law, chapter 401 of 1892.

Subdivision 2 corresponds to a license known as a storekeeper's license under subdivision 4 of former law, section 19, chapter 401 of 1892.

Subdivision 3 corresponds to subdivision 5, section 19, chapter 401 of 1892.

Subdivision 4 corresponds to section 30, chapter 401 of 1892.

It seems as if a person might traffic under any or all of these kinds of excise taxes, upon payment of proper taxes. Under former law on this subject, see Benson v. Moore et al., 15 Wend. 260; Atty.-Gen'l Rep. 1892, p. 169.

Druggist can not be licensed under subdivision 1. See section 22, post.

Who are innkeepers. People v. Jones, 54 Barb., 311.

The Attorney-General has held that it was not necessary under the former law to take out a license for every car containing passengers who drank liquors brought from the licensed car. Atty.-Gen'l Rep. 1894, p. 354.

Before the codification of 1892, a common carrier selling liquor had to take out a license in every town through which its train went.

See section 10, post, as to local option, and as to granting hotel tax certificates only in towns.

§ 12. **Tax, when due and payable.**— The several amounts to be paid as taxes under this act are assessed yearly, commencing on the first day of May, eighteen hundred and ninety-six, and shall be paid yearly on the first day of May of each year, and said assessments together with any penalty that may become due by reason of the violation of any of the provisions of this act, shall attach to and operate as a lien on the property on and in said premises where such traffic in liquors is carried on or elsewhere belonging to the corporation, association, copartnership or person from whom such tax is due; provided, however, that when such traffic shall be commenced after the said first day of May in any year, said assessment shall, for the balance of the year, be in proportion as the remainder of the year shall be to the whole year, except that it shall in no case be for less than one-twelfth of a year — any part of a month being computed as one month — and the said amount shall attach and operate as a lien as aforesaid, at the date of such commencement. This section is subject to the provisions of section four of this act relating to licenses in force at the date of the passage of this act.

Under the excise law repealed by this act, licenses could be granted at any time, and in cities could not be granted for less than a year. This tax

law goes back to the old system which permitted licenses to be granted at any time for such a period that the licenses all expired at the same time.

§ 13. **Officers to whom the tax is to be paid and how distributed.**— The taxes assessed and all fines and penalties incurred under this act in counties containing a city of the first class shall be collected by and paid to the special deputy commissioner for such county, and in all other counties to the county treasurer of the county in which the traffic is carried on, except that the taxes assessed under subdivision four of section eleven of this act, and all fines and penalties in connection therewith, shall be collected by and paid to the state commissioner of excise and by him to the state treasurer. One-third of the revenues resulting from taxes, fines and penalties under the provisions of this act, less the amount allowed for collecting the same, shall be paid by the county treasurer, and by the several special deputy commissioners within ten days from the receipt thereof, to the treasurer of the state of New York, to the credit of the general fund, as a part of the general tax revenue of the state, and shall be appropriated to the payment of the current general expenses of the state, and the remaining two-thirds thereof, less the amount allowed for collecting the same, shall belong to the town or city in which the traffic was carried on from which the revenues were received, and shall be paid by the county treasurer of such county, and by the special deputy commissioners to the supervisor of such town, or to the treasurer or fiscal officer of such city; and such revenues shall be appropriated and expended by such town or city, in such manner as is now or may hereafter be provided by law for the appropriation and expenditure of sums received for excise licenses, or in such other manner as may hereafter be provided by law.

§ 14. **Compensation of county treasurers.** — As full compensation and in full payment of all charges and expenses for collecting the taxes herein provided for, and keeping the necessary books, and making the necessary reports, and issuing the liquor tax certificates, the officer charged therewith, shall be allowed in counties containing a city of the second class, one per centum on the amount of taxes, penalties and fines collected; in counties containing a city of the third class, two per centum; and in all

other counties, except in counties containing a city of the first class, three per centum, which amount shall be deducted and retained by him from the moneys so collected, and charged one-third to the state and two-thirds to the locality to which the tax belongs.

§ 15. **Books and blanks to be furnished by the state commissioner of excise.** — Immediately upon the passage of this act the state commissioner of excise shall cause to be prepared the necessary books for his office, and shall also cause to be prepared and furnish to each special deputy commissioner and to each county treasurer in counties not containing a city of the first class, the necessary and proper books of record, and books in which accounts shall be kept of all taxes, or other moneys accruing and collected under the provisions of this act, and the necessary blanks for reports, and the blanks necessary for the application for liquor tax certificates, and the blank bonds and liquor tax certificates, provided for in this act, which books, blanks and certificates shall be uniform throughout the state. Such books of record and account and all reports, applications, and bonds when filed, shall be public records. The necessary expenses of preparing such books and blanks and certificates shall be paid out of the treasury of the state from any funds not otherwise appropriated. He shall furnish to each county treasurer in counties not containing a city of the first class, and to each special deputy commissioner, who shall keep the same, a record book showing in separate columns:

1. The name of each corporation, association, copartnership or person upon which or whom a tax is assessed under the provisions of this act.

2. The name of each corporation, association, copartnership or person paying a tax under the provisions of this act.

3. The name of each corporation, association, copartnership or person to which, or to whom, a certificate of the payment of such tax is issued.

4. Under which of the first three subdivisions of section eleven of this act such certificate of the payment of such tax is issued.

5. The date when such tax is assessed and the date of the commencement of the term for which issued.

6. The term for which such certificate is issued and the date of the ending thereof.

7. The amount of the tax assessed.

8. The amount of tax paid.

9. The date when paid.

10. The location of the premises where the traffic is carried on.

11. The name and residence of each surety or corporation on the bond of the corporation, association, copartnership or person to whom the tax certificate is issued.

12. The amount of each fine or penalty and the costs if any.

13. The amount collected.

14. The amount of the expense of such collection.

15. The date of the surrender or cancellation of any tax certificate and the cause therefor.

16. The amount of tax refunded, if any, upon such surrender or cancellation.

Such officers shall also keep such books of account and in such form as the state commissioner of excise shall provide and direct, and shall render to such commissioner such reports as he may from time to time require.

§ 16. **Local option, to determine whether liquors shall be sold under the provisions of this act.**— In order to ascertain the will of the qualified electors of each town, it shall be the duty of each officer of a town charged by the election law, or by any special act relating to elections in any town, with the duty of preparing official ballots, to have prepared at the time fixed by law for preparing the ballots for a town election occurring next after the passage of this act, the ballots required by the election law for voting upon any constitutional amendment, proposition or question, in the form and of the number required by the election law. Upon the face of the ballot to be voted at such election, by all persons who may legally vote thereat, shall be printed the following questions submitted:

1. Selling liquor to be drunk on the premises where sold.— Shall any corporation, association, copartnership or person be authorized to traffic in liquors under the provisions of subdivision one of section eleven of the liquor tax law in (here insert the name of the town).

2. Selling liquor not to be drunk on the premises where sold. — Shall any corporation, association, copartnership or per-

son be authorized to traffic in liquor under the provisions of subdivision two of section eleven of the liquor tax law in (here insert the name of the town).

3. Selling liquor as a pharmacist on physician's prescription. — Shall any corporation, association, copartnership or person be authorized to traffic in liquor under the provision of subdivision three of section eleven of the liquor tax law in (here insert the name of the town).

4. Selling liquor by hotel keepers. — Shall any corporation, association, copartnership or person be authorized to traffic in liquors under subdivision one of section eleven of the liquor tax law, as the keeper of a hotel in (here insert the name of town).

At such town meeting, the several questions may be voted upon by the electors who may legally vote thereat. A return of the votes so cast and counted shall be made as provided by law, and if the majority of the votes shall be in the negative on either of such questions, no corporation, association, copartnership or person shall thereafter so traffic in liquors or apply for or receive a liquor tax certificate under the subdivision or subdivisions of such section eleven, upon which the majority of votes have been cast in the negative, that is against so authorizing the traffic in liquors within such town, but if the majority of the votes cast on the fourth question submitted are in the affirmative, a liquor tax certificate may be granted under subdivision one of section eleven to the keepers of hotels. Such action shall not, however, shorten the term for which any liquor tax certificate may have been given under the provisions of this act, nor affect the rights of any person thereunder. The same questions shall be again submitted in the same way at the annual town election held in every second year thereafter, provided the electors of the town to the number of ten per centum of votes cast at the next preceding general election shall, by a written petition, signed and acknowledged by such electors before a notary public or other person authorized to take acknowledgments or administer oaths and duly filed with the officer charged with the duty of furnishing ballots for the election, request such submission. A copy of the statement of the result of the vote, upon each of such questions submitted, shall, immediately after

such submission thereof be filed by the town clerk or other officer with whom returns of town elections are required to be filed by the election law, with the county treasurer of the county, and with the special deputy commissioner for counties containing a city of the first class, which also contains a town, and no liquor tax certificate shall thereafter be issued by such officers to any corporation, association, copartnership or person under such subdivision of section eleven of this act upon which a majority of the votes may have been cast in the negative, but if the majority of the votes cast on the fourth question submitted are in the affirmative, a liquor tax certificate may be granted under subdivision one of section eleven to the keepers of hotels. It is further provided that in any town in which at the time this act shall become a law there is no license, it shall not be lawful for the county treasurer, or special deputy commissioner to issue any liquor tax certificate provided for by this act, until such town shall have voted upon the questions provided to be submitted by this section, and then to issue such liquor tax certificate only, as may be in accordance with the vote of a majority of the electors on the question submitted.

Commissioners of excise in towns were created in the Town Law, chapter 569 of 1890, sections 12, 16, 20, 38 and 61; such law is not repealed expressly by this act. See People ex. rel. v. Commissioners, 4 Misc. Rep., 551; People ex. rel. v. Waters, 4 Misc. Rep., 1, 53 N. Y. St. Rep., 720, 23 N. Y. Supp., 691; People ex. rel. v. Jones, 4 Misc. Rep., 10, 53 N. Y. St. Rep., 724, 23 N. Y. Supp., 695; People ex rel. v. Truman, 4 Misc. 247, 53 N. Y. St. Rep., 726, 23 N. Y. Supp., 913; People ex. rel. v. Commissioners of Warsaw, 4 Misc. Rep. 547, 54 N. Y. St. Rep., 202, 24 N. Y. Supp., 739; People ex. rel. v. Board of Coms. of Randolph, 75 Hun, 224.

Electors of towns can only decide as to local option by election of commissioners of excise; Rep. of Atty.-Gen'l 1894, p. 300; also, McNaughton v. Board, 5 Misc. Rep., 457.

See section 34, post.

§ 17. **Statements to be made upon application for liquor tax certificates.** — Every corporation, association, copartnership or person liable for a tax under subdivisions one, two or three of section eleven of this act, shall, on or before the first day of May of each year, or if now holding a license legally granted by any board of excise, then on or before the termination of such license, prepare and make upon the blank which shall be furnished by the county treasurer of the county and in counties containing

a city of the first class by the special deputy commissioner for such county upon application therefor, a statement which shall be given to such county treasurer or special deputy, signed and sworn to by such applicant or applicants, or by the person making such application in behalf of a corporation, or association, stating:

1. The name of each applicant, and if there be more than one and they be partners, also their partnership name, and the age and residence of the several persons so applying.

2. The name of every person interested or to become interested in the traffic in liquors for which the statement is made, unless such applicant be a corporation or association, in which case the person making the application in behalf of the corporation or association, shall set forth instead, the name of the corporation, or association, and the nature of his authority to act for such corporation or association.

3. The premises where such business is to be carried on, stating the street and number, if the premises have a street and number, and otherwise such apt description as will reasonably indicate the locality thereof.

4. Under which of the first three subdivisions of section eleven of this act the traffic in liquors is to be carried on and what, if any, other business is to be carried on in connection therewith, or on the same premises.

5. And a statement that such applicant or applicants may lawfully carry on such traffic in liquors upon such premises, under such subdivision, and are not within any of the prohibitions of this act.

6. There shall also be so filed simultaneously with said statement, a consent in writing that such traffic in liquors be so carried on in such premises, executed by the owner of the premises, or by his duly authorized agent, and acknowledged as are deeds entitled to be recorded; except in cases where such traffic in liquors was actually lawfully carried on in said premises so described in said statement at the time of the passage of this act, in which case such consent shall not be required.

7. If the premises where such traffic is to be carried on are situated in any public park, such applicant or applicants shall at the same time file with such county treasurer, or special deputy

the written consent of the authorities having the custody and control of said park for the traffic in liquors therein.

8. When the nearest entrance to the premises described in said statement as those in which traffic in liquor is to be carried on is within two hundred feet of the nearest entrance to a building or buildings occupied exclusively for a dwelling, there shall also be so filed simultaneously with said statement a consent in writing that such traffic in liquors be so carried on in said premises during a term therein stated, executed by at least two-thirds of the owners of such buildings within two hundred feet so occupied as dwellings, and acknowledged as are deeds entitled to be recorded, except that such consent shall not be required in cases where such traffic in liquor is actually lawfully carried on in said premises so described in said statement when this act takes effect.

9. Every corporation, association, copartnership or person liable for a tax under subdivision four of section eleven of this act shall, on or before the first day of May of each year, or if now holding a license from the comptroller of the state, then on or before the termination of such license, prepare and make upon a blank, which shall be furnished by the state commissioner of excise, such statements in regard to carrying on such traffic as the commissioner may require, including the statements required under clauses one, two and five of this section.

For requirements under excise law see section 20, chapter 401 of 1892, as amended by chapter 480 of 1893.

See section 23, post, as to what corporations, associations or persons may have liquor tax certificate.

See forms 2, 3, 4, 5, 6 and 7.

The consent of owner of premises and of two-thirds of property owners of buildings used exclusively as dwellings are new requirements.

The provision in subdivision 7 above, is similar to subdivision 3, section 20 of Excise Law, as amended by chapter 480 of 1893.

§ 18. **Bonds to be given.** — Each corporation, association, copartnership or person taxed under this act, shall at the time of making the application provided for in section seventeen of this act, file in the office of the county treasurer of the county in which such traffic is to be carried on, or if in a county containing a city of the first class with the special deputy commissioner for such county, or if the application be under subdivision four of

section eleven of this act, with the state commissioner of excise, a bond to the people of the state of New York, in the penal sum of twice the amount of the tax for one year upon the kind of traffic in liquor to be carried on by such applicant, where carried on, but in no case for less than five hundred dollars, conditioned that if the tax certificate applied for is given, the applicant or applicants will not, while the business for which such tax certificate is given shall be carried on, suffer or permit any gambling to be done in the place designated by the tax certificate in which the traffic in liquors is to be carried on, or in any yard, booth or garden appertaining thereto or connected therewith, or suffer or permit such premises to become disorderly, and will not violate any of the provisions of the liquor tax law. Such bond shall be executed by each such applicant, and if given by a corporation or association, by some person or persons duly authorized so to do as principal, and by at least two sureties residents of the town or city in which the premises are where such traffic is to be carried on, one of whom shall be a freeholder, or instead of such sureties, by a corporation duly authorized to issue surety bonds by the laws of this state. The bond, if given by two sureties, shall have annexed thereto or indorsed thereon the affidavit of each surety that he is worth double the penal sum named in such bond over and above his property exempt by law from levy and sale upon an execution and over and above his just debts and liabilities.

The provisions of this section are nearly similar to subdivision 2, section 20 of Excise Law, as amended by chapter 480 of 1893.

The provision that the bond may be executed by a duly authorized corporation instead of by two sureties, is entirely new, though in conformity with general provisions of other statutes.

See Form 8.

No person can become a surety on a bond until five years after conviction under this act. See section 34, post.

§ 19. **The payment of the tax and issuing of the tax certificate.**— When the provisions of sections seventeen and eighteen of this act have been complied with and the application provided for in section seventeen is found to be correct in form and the bond required by section eighteen is found to be correct as to its form and the sureties thereon are approved as sufficient by the county treasurer, or if in a county containing a city of the first class by the special deputy commissioner for such county,

then upon the payment of the taxes levied under section eleven of this act the county treasurer of the county, and in a county containing a city of the first class, the special deputy commissioner for such county, or if the application be made under subdivision four of section eleven of this act, the state commissioner of excise shall at once prepare and issue to the corporation, association, copartnership or person making such application and filing such bond and paying such tax, a liquor tax certificate in the form provided for in this act.

§ 20. **Form of liquor tax certificate.**— The liquor tax certificates shall be furnished by the state commissioner of excise to the several county treasurers, and to the special deputy commissioners and shall be lithographed or engraved in a suitable manner, and on durable paper, and of the following form:

$..... No.....

Series of ..... (A suitable device inserted.) Series of.....

STATE OF NEW YORK.

Liquor Tax Certificate.

Received from ..... the sum of ..... dollars for excise tax on the business of trafficking in liquor under subdivision ..... of section eleven of the Liquor Tax Law.

The business to be carried on at ....., in the ..... of ....., for the period represented by the coupon or coupons hereto attached.

Dated at ....., 18..

.....

Special Deputy Commissioner
for the county of.....
or
County Treasurer of.....County.

Severe penalties are imposed for neglect or refusal to place and keep this certificate conspicuously in your place of business.

Attached thereto on the left as a part thereof shall be twelve coupons, one for each month of the tax year. On the one on the extreme left shall be printed:

"Coupon for liquor tax certificate number .... for May, ..." and each coupon shall be similarly printed except as to the month. A tax certificate similar in form shall be issued by the state commissioner of excise, to those applying under subdivision four of section eleven of this act.

See Form I.

§ 21. **Posting liquor tax certificate.**— Before commencing or doing any business for the time for which the liquor tax is paid and the certificate is given, the said liquor tax certificate shall be posted up and at all times displayed in a conspicuous place where the traffic in liquors for which the tax was paid is carried on, so that all persons visiting such place may readily see the same, and if there be in such place on the same floor as the principal door of entrance, a window facing the street upon which such principal place of entrance is, such certificate shall be displayed in such window, so it may be readily seen from the street. It is provided, however, that when the holder of an unexpired license under the law in force prior to the passage of this act, or the holder of a liquor tax certificate under this act shall have presented the application and bond as required by sections seventeen and eighteen of this act, and paid the tax assessed by this act, not less than fifteen days before the time fixed for the expiration of such license or tax certificate, such holder of such license or tax certificate may continue to traffic in liquors pending the issue of the tax certificate, until notified in writing, by the officer charged with the duty of issuing such tax certificate, that such tax certificate so applied for will not be issued.

In Excise Law, section 23, it was only necessary to post license on premises licensed.

This section is inconsistent with section 29 so far as this section provides for selling liquor after the time of the tax certificate has expired.

§ 22. **Restrictions on the traffic in liquors in connection with other business.** — No corporation, association, copartnership or person engaged in carrying on the business of selling dry goods or groceries, or provisions, or drugs as a pharmacist, shall be assessed under subdivision one of section eleven of this act, or receive a liquor tax certificate under such subdivision, unless it be to carry on the traffic in liquors under such sub-

division one at some other place entirely distinct and separate from, and not communicating with the place where, and in which, such business of selling dry goods, groceries, provisions or as a pharmacist is carried on.

New. See section 34, post.

§ 23. **Persons who shall not traffic in liquors, and persons to whom a liquor tax certificate shall not be granted.**

1. No person who shall have been, or shall be convicted of felony;

2. No person under the age of twenty-one years;

3. No person not a citizen of the United States and a resident of the state of New York;

4. No corporation or association incorporated or organized under the laws of another state or country; provided, however, that if such corporation or association be acting as a common carrier in this state it may be granted a liquor tax certificate under subdivision four of section eleven of this act;

5. No copartnership, unless one or more of the members of such copartnership, owning at least one-half interest in the business thereof, shall be a resident of this state and a citizen of the United States;

6. No person who has had a license revoked under the laws in force immediately prior to the passage of this act by reason of a violation of such laws;

7. No person who shall be convicted for a violation of this act, until five years from the date of such conviction;

8. No corporation, association, copartnership, or person who as owner or agent carries on or permits to be carried on, or is interested in any traffic, business or occupation, the carrying on of which is a violation of law, shall traffic in liquors or be granted a liquor tax certificate or be interested therein.

See section 17 ante, and section 34 post.

Somewhat similar provisions were in section 18 of the Excise Law, as amended by chapter 480 of 1893; but in the former law it was required that the applicant should be a person of good moral character approved by the board. Under the Excise Law, and particularly under this section 18, the excise commissioners were enabled to exercise their discretionary powers, which are not conferred upon any officers under this act.

§ 24. **Place in which traffic in liquor shall not be permitted.**—Traffic in liquor shall not be permitted,

1. In any building owned by the public, or upon any premises established as a penal institution, protectory, industrial school, asylum, state hospital or poor-house, and if such premises, other than a county jail, be situated in a town and outside the limits of an incorporated village or city, not within one-half mile of the premises so occupied, provided there be such distance of one-half mile between such premises and the nearest boundary line of such village or city; nor [*Thus am. by L.* 1896, *ch.* 445, *taking effect May* 9, 1896.]

2. Under the provisions of subdivision one of section eleven of this act, in any building, yard, booth or other place which shall be on the same street or avenue and within two hundred feet of a building occupied exclusively as a church or a school-house; the measurements to be taken from the center of the nearest entrance of the building used for such church or school to the center of the nearest entrance of the place in which such liquor traffic is desired to be carried on; provided, however, that this prohibition shall not apply to a place which is occupied for a hotel, nor to a place in which such traffic in liquors is actually lawfully carried on when this act takes effect, nor to a place which at such date is occupied, or in process of construction, by a corporation or association which traffics in liquors solely with the members thereof, nor to a place within such limit to which a corporation or association trafficking in liquors solely with the members thereof when this act takes effect may remove; provided, however, such place to which such corporation or association may so remove, shall be located within two hundred feet of the place in which such corporation or association so traffics in liquors when this act takes effect.

See section 34, post.

Subdivision 1 is somewhat similar to section 34 of the Excise Law.

The prohibition in subdivision 2 is exactly similar to that in section 43 of the Excise Law, chapter 401 of Laws of 1892, as amended by chapter 480 of Laws of 1893, but exceptions are herein made to a club now building, or a place within the prohibited space to which a club may move. As to construction of section 43 of former law, which also applies to this section, People ex rel. Cairns v. Murray, 148 N. Y., 171.

Time former act began to apply. Leicht v. Board, 46 N. Y. St. Rep. 835.

As to building occupied exclusively as a church or school-house. People ex rel. Cairns v. Murray, 148 N. Y., 171; People ex rel. v. Dalton, 9 Misc. Rep., 249, 60 N. Y. St. Rep., 648, 30 N. Y. Supp., 407.

§ 25. **Surrender and cancellation of liquor tax certificates.**— If a corporation, association, copartnership or person holding a liquor tax certificate and authorized to sell liquors under the provisions of this act shall voluntarily, and before arrest or indictment for a violation of this act, cease to traffic in liquors during the term for which such tax is paid, such corporation, association, copartnership or person may surrender such tax certificate to the officer who issued the same or to his successor in office, who shall thereupon cancel the same and refund the pro rata amount of the tax paid for the unexpired term of such tax certificate, provided that such tax certificate shall have at least one month to run at the time of such surrender; and provided further, that such refunding shall be for full months commencing with the first day of the month succeeding the one in which such certificate is surrendered, unless such surrender be on the first day of the month; or if a corporation, association or copartnership holding a liquor tax certificate shall be dissolved, or a receiver or assignee be appointed therefor, or a receiver or assignee of the property of a person holding a liquor tax certificate be appointed during the time for which such certificate was granted, or a person holding a liquor tax certificate shall die during the term for which such tax certificate was given, such corporation, association, copartnership or receiver or assignee, or the administrator or executor of the estate of such person, or the person or persons who may succeed to such business, may in like manner surrender such liquor tax certificate; or they may continue to carry on such business, upon such premises, for the balance of the term for which such tax was paid and certificate given, with the same right and subject to the same restrictions and liabilities as if such persons had been the original applicants for and the original owners of such liquor tax certificate, and not otherwise; but the liquor tax certificate under which such business is carried on shall have written or stamped across the face of the same, over the signature of the officer who issued the same or his successor in office the words "(here insert the name of the person) is permitted to traffic in liquor as (here insert the representative capacity whether as assignee, receiver, executor, administrator

or otherwise) of the original owner of this certificate for the unexpired term thereof."

New.

Under Excise Law it was necessary to have license transferred from the licensee to another, and such transfer was in the discretion of the commissioners under section 26.

Under section 25 of the Excise Law, the provisions above, that the representatives, etc., of the deceased could carry on the business licensed during the unexpired term of the license, existed.

§ 26. **Changing the place of traffic.** — If a corporation, association, copartnership or person, having paid a tax and holding a liquor tax certificate, shall desire to transfer to and carry on such business for which the liquor tax certificate was issued in other premises than those designated in the original application, and in the tax certificate, but in the same city or town, and in premises where such traffic is not prohibited by this act, upon the making and filing of a new application and bond in the form and as provided for in sections seventeen and eighteen of this act and the presentation of the tax certificate, the officer who issued the same or his successor in office, shall write or stamp over his signature across the face of the certificate, the words, "The traffic in liquors permitted to be carried on under this certificate is hereby transferred from (here insert the description of the original locality) to (here insert the description of the new locality)."

This is same provision as existed under subdivision 1, section 26, Excise Law.

It is evident from this section and from section 28, post, that the holder of a tax certificate is entitled as a matter of right to transfer his tax certificate from place to place without the prohibited limits, and upon complying with the provisions of this law.

It seems that a person licensed before the passage of this act must obtain the consent of two-thirds of the owners of buildings used exclusively as dwellings, within 200 feet, if such person, after this act goes into effect, desires to transfer his tax certificate.

See Form 9.

§ 27. **Voluntary sale of a liquor tax certificate.** — The corporation, association, copartnership or person to whom any liquor tax certificate is issued, may sell, assign and transfer such liquor tax certificate during the time for which it was granted to any corporation, association, copartnership or person not for-

bidden to traffic in liquors under this act, nor under the subdivision of section eleven under which such certificate was issued, who may thereupon carry on the business for which such liquor tax certificate was issued upon the premises described therein, if such traffic is not prohibited therein by this act, during the balance of the term of such tax certificate, with the same rights, and subject to the same liabilities as if such corporation, association, copartnership or person were an original applicant for such certificate and the original owner thereof, upon the making and filing of a new application and bond by such purchaser in the form and as provided for by sections seventeen and eighteen of this act, and the presentation of the tax certificate to the officer who issued the same or to his successor in office, who shall write or stamp across the face of the certificate over his signature the words "consent is hereby given for the transfer of this liquor tax certificate to (and here insert the name of the corporation, association, copartnership or person to whom the same is transferred.)" For each indorsement under sections twenty-five, twenty-six and twenty-seven of this act, the officer making the same shall charge and receive the sum of ten dollars to be paid by the applicant, which sum shall be apportioned and accounted for as are taxes, as provided in sections thirteen and fourteen of this act.

This section is similar to subdivision 2, section 26 of Excise Law.

A person may undoubtedly sell and transfer his tax certificate to another, and upon the transfer of the certificate by the proper officer, may compel the payment of the sum agreed by the transfer, and enforce the contract. Rubenstein v. Kahn, 5 Misc. Rep., 408.

See Form 10.

§ 28. **Certiorari upon refusal to issue or transfer liquor tax certificates, and of the revocation and cancellation of a liquor tax certificate.** — Whenever any officer charged with the duty of issuing or consenting to a transfer of a liquor tax certificate under the provisions of this act shall refuse to issue or transfer the same, such officer shall indorse upon the application therefor, or attach thereto a statement of his reasons for such determination, and shall, if requested, furnish to the applicant a copy of such statement. Such applicant shall have the right to a writ of certiorari to review the action of such officer. The writ may be issued by, returnable to, and heard by a county judge of the county, or a justice of the supreme court of the judicial

district in which the premises are situated in which the applicant desires to carry on the business of trafficking in liquors. If the writ be granted, the officer to whom it is directed shall in his return thereto, include copies of all the papers on which his action was based, and a statement of his reasons for refusing to grant such application. If such judge or justice shall upon the hearing determine that such application for a liquor tax certificate or for a transfer has been denied by such officer without good and valid reasons therefor, and that under the provisions of this act such liquor tax certificate should be issued, such judge or justice may make an order commanding such officer to grant such application and to issue a liquor tax certificate to such applicant upon the payment of the tax therefor. At any time after a liquor tax certificate has been granted to any corporation, association, copartnership or person in pursuance of this act, under subdivisions one, two or three of section eleven, any citizen of the state may present a verified petition to a justice of the supreme court or a special term of the supreme court, of the judicial district in which such traffic in liquors is authorized to be carried on, or in which the holder of such certificate resides, or if such holder of a liquor tax certificate is authorized to traffic in liquor under subdivision four of section eleven of this act, to a justice of the supreme court of the judicial district in which the principal office within this state of the corporation, copartnership or association is located, for an order revoking and cancelling such certificate, upon the ground that material statements in the application of the holder of such certificate were false, or that he is not entitled to hold such certificate. Such petition shall state the facts upon which such allegations are based. Upon the presentation of the petition, the justice or court shall grant an order requiring the holder of such certificate, and the officer who granted the same, or his successors in office, to appear before him, or before a special term of the supreme court of the judicial district, on a day specified therein, not more than ten days after the granting thereof. A copy of such petition and order shall be served upon the holder of such certificate, and the officer granting the same, or his successors in office, in the manner directed by such order, not less than five days before the return day thereof. On the day specified in such order, the justice or court before whom the same is

returnable shall hear the proofs of the parties, and may, if deemed necessary or proper, take testimony in relation to the allegations of the petition, or appoint a referee to take proofs in relation thereto, and report the evidence to such justice or court. If the justice or court is satisfied that material statements in the application of the holder of such certificate were false, or that the holder of such certificate is not entitled to hold such certificate, an order shall be granted revoking and cancelling such certificate. The decision of such justice or court shall be final and conclusive, and no appeal therefrom shall be had or taken. Upon the entry of such order in the county clerk's office of the county in which the traffic in liquors is authorized to be carried on under the certificate so revoked, and filing a copy thereof with the officer who issued such certificate, or his successor in office, and the service of a certified copy thereof upon the holder of said liquor tax certificate, or such substituted service as the court or justice may direct, all the rights of the holder of said liquor tax certificate under such certificate, to traffic in liquors or to any rebate thereon under this act, shall cease. Costs upon such proceedings may be awarded in favor of and against any party thereto, in such sums as in the discretion of the justice or court before which the petition is heard, may seem proper.

The rights of the licensee under the Excise Law to have a license, and to transfer it, were subject to the judicious exercise of the discretionary power of the board. Under the Liquor Tax Law, the right is absolute, provided the applicant for the tax certificate complies with the requirements of the act. The right to review by certiorari is absolute under each statute, but the reasons for reversal are materially changed under the Liquor Tax Act.

The right to review by a writ of certiorari, the refusal of the board to issue a license was given under both sections 24 of Excise Law. The right to review the refusal to transfer was given under one section 24. Both chapter 480 and chapter 481 of 1893, were signed the same day, and had to be construed together or as supplemental to each other.

When writ will issue. People ex rel. v. Waters, 4 Misc. Rep., 1, 53 N. Y. St. Rep., 718, 23 N. Y. Supp., 689; Martin v. Symonds, 4 Misc. Rep., 6, 53 N. Y. St. Rep., 724, 23 N. Y. Supp., 695.

If our view of the law is correct that the Town Law's provisions as to the election of excise commissioners are not repealed by this act, the following cases may be useful; People ex. rel v. Coms. of Excise, 4 Misc. Rep. 547, 54 N. Y. St. Rep., 202. 24 N. Y. Supp., 739; People ex rel. v. Commissioners, 4 Misc. Rep., 247, 53 N. Y. St. Rep., 726, 23 N. Y. Supp., 913. See Martin v. Symonds, supra, and McNaughton v. Board of Excise, 5 Misc. Rep., 457, and People ex rel. v. Coms., 75 Hun, 224. See section 16 as to local option.

The provisions of this section as to the revocation and cancellation of the tax certificate are similar to the enactments in sections 27 and 28 of the Excise Law, except that in the latter law the commissioners of excise had the power to revoke the license without any legal proceedings.

The provision of the statute providing for a cancellation of the license by a board of excise is not in contravention of the Constitution preserving the right of trial by jury. People v. Coms., 54 N. Y., 92.

§ 29. **Injunction for trafficking in liquor without liquor tax certificate.** — If any corporation, association, copartnership or person shall unlawfully traffic in liquor, without obtaining a liquor tax certificate, as provided by this act, the state commissioner of excise, the deputy commissioner, special deputy commissioners, special agents or, except in counties containing a city of the first class, the county treasurer of the county in which the principal office of such corporation, association or copartnership is located, or in which such person resides or trafficks in liquor, may present a verified petition to a justice of the supreme court or a special term of the supreme court of the judicial district in which such county is situated, for an order enjoining such corporation, association, copartnership or person from trafficking in liquor thereafter. Such petition shall state the facts upon which such allegations are based. Upon the presentation of the petition, the justice or court shall grant an order requiring such corporation, association, copartnership or person to appear before him, or before a special term of the supreme court of the judicial district, on the day specified therein, not more than ten days after the granting thereof, to show cause why such corporation, association, copartnership or person should not be permanently enjoined from trafficking in liquor, until a liquor tax certificate has been obtained, in pursuance of law. A copy of such petition and order shall be served upon the corporation, association, copartnership or person, in the manner directed by such order, not less than five days before the return day thereof. On the day specified in such order, the justice or court, before whom the same is returnable, shall hear the proofs of the parties, and may, if deemed necessary or proper, take testimony in relation to the allegations of the petition, or appoint a referee to take proofs in relation thereto, and report the evidence to such justice or court. If the justice or court is satisfied that such corporation, association, copartnership or person is unlawfully trafficking in liquor without having obtained a liquor tax certifi-

cate as provided by this act, an order shall be granted enjoining such corporation, association, copartnership or person from thereafter trafficking in liquor, without obtaining a liquor tax certificate. If, after the entry of such order in the county clerk's office of the county, in which the principal place of business of the corporation, association, or copartnership is located, or in which the person so enjoined resides or traffics, and the service of the copy thereof upon such corporation, association, copartnership or person, or such substituted service as the court may direct, such corporation, association, copartnership or person shall in violation of such order traffic in liquor, such traffic shall be deemed a contempt of court and punishable in the manner provided by the code of civil procedure. Costs upon the application for such injunction may be awarded in favor of, and against the parties thereto, in the discretion of the justice or court, before which the petition is heard. If awarded against the people of the state of New York, such costs shall be payable by the county treasurer, special deputy or state commissioner, upon the certificate of such justice or court, out of any moneys which may be in his hands, or that may thereafter come into his hands, on account of the tax provided for by this act; and the decision of the justice or court thereon shall be final and conclusive, and no appeal shall be had or taken.

New.

This section provides a substitute for section 31 of the Excise Law, which made illegal sales without license a misdemeanor.

This section is not consistent with section 21 of this act which provides that a person holding a tax certificate may continue to sell if he has made an application to the proper authority, until notified that such tax certificate so applied for, will not be issued.

§ 30. **Persons to whom liquor shall not be sold or given.**—No corporation, association, copartnership or person, whether taxed under this act or not, shall sell or give away any liquors to:

1. Any minor under the age of eighteen years;
2. To any intoxicated person;
3. To any habitual drunkard;
4. To any Indian;
5. To any person to whom such corporation, association, copartnership or person may be forbidden to sell by notice in writing from the parent, guardian, husband, wife or child of such person over sixteen years of age, or by a magistrate or overseer of the

poor of the town; provided, however, that such notice in writing by a magistrate or overseer of the poor of a town shall apply only in the case of a person who is wholly or partly a charge upon the town, which fact shall be stated in such notice.

6. To any person confined in or committed to a state prison, jail, penitentiary, house of refuge, reformatory, protectory, industrial school, asylum or state hospital, or any inmate of a poor-house, except upon a written prescription from a physician to such institution, specifying the cause for which such prescription is given, the quantity and kind of liquor which is to be furnished, the name of the person for whom and the time or times at which the same shall be furnished. Such prescription shall not be made unless the physician is satisfied that the liquor furnished is necessary for the health of the person for whose use it is prescribed, and that fact must be stated in the prescription.

This section is in every respect, similar to subdivision 6, section 32, Excise Law, and subdivision 6 is similar to section 34, Excise Law.

Sale to minors. Ross v. People, 17 Hun, 591.

In an action to recover a penalty for selling to a minor, the plaintiff has the burden of the proof to show that the defendant knew, or had reason to believe that the person to whom the liquor was sold was under the age of sixteen. Perry v. Edwards, 44 N. Y., 223.

Sale to intoxicated person. People v. Hislop, 77 N. Y., 331; People ex rel. v. Cowles, 16 Hun, 577.

See section 34, post.

§ 31. **Other illegal sales and selling.** — It shall not be lawful for any corporation, association, copartnership or person which, or who, has not paid a tax as provided in section eleven of this act and obtained and posted the liquor tax certificate as provided in this act to sell, offer or expose for sale, or give away liquors in any quantity less than five wine gallons at a time; nor, without having paid such tax and complied with the provisions of this act, to sell, offer or expose for sale, or give away liquor in any quantity whatever, any part of which is to be drunk on the premises of such vendor or in any outbuilding, booth, yard or garden appertaining thereto or connected therewith. It shall not be lawful for any corporation, association, copartnership or person, whether having paid such tax or not, to sell, offer or expose for sale, or give away any liquor:

a. On Sunday; or before five o'clock a. m. on Monday; or

b. On any other day between one o'clock and five o'clock in the morning; or

c. On the day of a general or special election, or city election or town meeting, or village election, within one-quarter of a mile of any voting place, while the polls for such election or town meeting shall be open; or

d. Within two hundred yards of the grounds or premises upon which any state, county, town or other agricultural or horticultural fair is being held, unless such grounds or premises are within the limits of a city containing one hundred and fifty thousand inhabitants or more; or

e. To sell or expose for sale or have on the premises where liquor is sold, any liquor which is adulterated with any deleterious drug, substance or liquid which is poisonous or injurious to health; or to give away any food to be eaten on such premises; or

f. To permit any girl or woman not a member of his family, to sell or serve any liquor upon the premises; or

g. To have open or unlocked any door or entrance from the street, alley, yard, hallway, room or adjoining premises to the room or rooms where any liquors are sold or kept for sale during the hours when the sale of liquors is forbidden, except when necessary for the egress or ingress of the person or members of his family for purposes not forbidden by this act; or

h. To have during the hours when the sale of liquor is forbidden any curtain, screen or blinds, opaque or colored glass, that obstructs the view from the sidewalk, alley, or road in front of, or from the side, or end of the building, of the bar or place in such building where liquors are sold or kept for sale; or

i. For the holder of a liquor tax certificate under subdivision four of section eleven to sell liquor except to passengers in actual transit; but the provisions of clauses "a," "b," "c," and "d" of this section are subject to two exceptions, as follows:

1. The holder of a liquor tax certificate under subdivisions two or three of section eleven of this act who is a regularly licensed pharmacist, may sell liquor upon the prescription of a physician, which prescription shall be preserved by the vendor and pasted in a book and be but once filled, and that only on the day when dated and given, and such liquor so sold shall not be drunk on

the premises where sold, or in any outbuilding, yard, booth or garden appertaining thereto or connected therewith, and provided further that the physician giving such prescription, shall not be the pharmacist himself, nor a member of the corporation, association or copartnership selling such liquor, nor in his or their employ; and

2. The holder of a liquor tax certificate under subdivision one of section eleven of this act who is the keeper of a hotel, may sell liquor to the guests of such hotel, except to such persons as are described in clauses one, two, three, four and five of section thirty of this act, with their meals, or in their rooms or apartments therein, but not in the bar-room or other similar room of such hotel; (the term hotel as used in this act shall mean a building or place which is regularly kept open for the feeding and lodging of guests and in which there shall be at least ten furnished bedrooms for their occupancy if situate in any city, incorporated village, or within two miles of the corporate limits of either; and at least six bedrooms if situate in any other place).

See section 34, post.

Subdivisions a, b, c and d, are similar to subdivisions 1, 2, 3 and 4, section 32, Excise Law.

Subdivision e is new as far as it prohibits free lunch.

Subdivision f, corresponds to subdivision 3, section 28, Excise Law.

Subdivision g, h and i, are new.

Subdivision 1, corresponds to last part of section 32, Excise Law.

Subdivision 2, apparently only makes exceptions to the case of a hotel, and does not include a club which is prohibited under this act from selling on Sunday, etc.

§ 32. **Sales and pledges; when void.**— No recovery shall be had in any civil action, to recover the purchase price of any sale on credit of any liquor, to be drunk on the premises, where the same shall be sold. All securities given for such debts shall be void. Any person taking such security, with intent to evade this section, shall forfeit double the sum intended to be secured thereby, recoverable by the county treasurer or in a county containing a city of the first class by the special deputy commissioner for such county, in a civil action, and to be disposed of in the same manner as are liquor taxes collected under this act. Every assignment, sale or pledge of articles or property exempt, by law, from execution, and every levy or sale of such articles or property by virtue

of an execution by consent of the defendant therein, shall be void, where the consideration, or any part thereof, for which such assignment, sale or pledge was made, or for the debt on which judgment was rendered in any court and on which such execution was issued, was for the sale of liquors.

This section extends the prohibition against receiving pledges or pawns from Indians (chapter 679 of 1892) for liquors sold to Indians, it commencing an action on pledges or pawns received from anyone for liquor sold.

Chapter 679 of 1892 is still in force.

§ 33. **Persons liable for violation of this act.**— Any person engaged in the traffic in liquors, whether as officer of a corporation, or association, or as a member of a copartnership, or an individual, shall upon conviction of a violation of any of the provisions of this act be liable for and suffer the penalties imposed therein; and any clerk, agent, employe or servant shall be equally liable as principals for any violation of the provisions of this act, and each violation of any of the provisions of this act shall be construed to constitute a separate and complete offense, and for each violation on the same day, or on different days, the person or persons offending shall be liable to the penalties and forfeitures imposed by this act; and in the following section providing for penalties and forfeitures when corporations or associations are referred to, and penalties and forfeitures are imposed thereon, the same shall be understood to mean and apply to the officers of such corporation or association.

New.

§ 34. **Penalties for violations of this act.**— 1. Any corporation, association, copartnership or person trafficking in liquors, who shall neglect or refuse to make application for a liquor tax certificate or give the bond, or pay the tax imposed as required by this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred nor more than two thousand dollars, provided such fine shall equal at least twice the amount of the tax for one year, imposed by this act upon the kind of traffic in liquors carried on, where carried on, and may also be imprisoned in a county jail or a penitentiary for the term of not more than one year;

2. Any corporation, association, copartnership or person, who

shall make any false statement in the application required to be presented to the county treasurer or other officer to obtain a liquor tax certificate, or to obtain a transfer thereof, or who shall violate the provisions of this act by trafficking in liquors, contrary to the provisions of section sixteen, twenty-two, twenty-three, twenty-four, thirty or thirty-one shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in a county jail or penitentiary for a term of not more than one year, or by both such fine and imprisonment, and shall forfeit the liquor tax certificate, and be deprived of all rights and privileges thereunder, and of any right to a rebate of any portion of the tax paid thereon, and such certificate shall be surrendered to the officer who issued it, or to his successor in office who shall cancel the same; but this clause does not apply to violations of sections thirty-one of this act the punishment for which is provided for in the first clause of this section.

3. If there shall be two convictions of clerks, agents, employes, or servants of a holder of a liquor tax certificate for a violation of any provisions of this act, the liquor tax certificate of the principal shall be forfeited, and said principal shall be deprived of all rights and privileges thereunder, and of any right to any rebate of any portion of the tax paid thereon, and such certificate shall be surrendered to the officer who issued it or to his successor in office, who shall cancel the same.

4. No liquor tax certificate shall be issued to any person so convicted within five years from the date of such conviction, nor shall any such person have any interest therein, or become a surety on any bond, required under section eighteen of this act, during such period.

It must be noticed that under section 23, ante, that a person whose license was revoked under the Excise Law can not obtain a tax certificate under this act, while a person whose tax certificate is revoked under this act may obtain a tax certificate five years after such revocation.

See section 35, post.

§ 35. **Jurisdiction of courts.**— Except as otherwise provided by this act, all proceedings instituted for the punishment of any violation of the provisions of this act, the penalties for which are prescribed in section thirty-four, shall be prosecuted by

indictment by the grand jury of the county in which the crime was committed, and by trial in a court of record having jurisdiction for the trial of crimes of the grade of a felony, except that a magistrate may issue a warrant of arrest upon information and depositions and examine the case as now provided by law, but if it shall appear upon such examination that a crime, the penalty for which is prescribed in section thirty-four, has been committed, and that there is sufficient cause to believe the person or persons charged with such crime guilty thereof, such magistrate may admit such person or persons to bail, in a sum not less than one thousand dollars, and in default of bail, shall commit him or them to the sheriff of the county or if in the city of New York to the keeper of the city prison of the city of New York.

Jurisdiction is limited herein to courts of record having jurisdiction of crimes of the grades of a felony.

For jurisdiction, etc., under Excise Law, see sections 22, 31, 35, 39, 51, 56, 57, 58, 59, 60, 62, 63, 64, 68, 74, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 159, 160, 161, 164, 165, 166, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 252, 255, 256, 257, 258, 259, 260, 887, 890, 899, 900, of the Code of Criminal Procedure.

§ 36. **Collection of fines and penalties and forfeitures of bonds.**— Upon the conviction and sentence of any corporation, association or copartnership and upon the conviction and sentence of any person or persons whether as officer of a corporation or as a member of a copartnership or as an individual, for a violation of the provisions of this act, the penalty for which is prescribed in sections twenty-eight, twenty-nine or thirty-four hereof, the court or officer imposing the sentence, or the clerk of the court, if there be a clerk, shall forthwith make and file in the office of the clerk of the county in which such conviction shall have been had a certified statement of such conviction and sentence, and the clerk of said county shall immediately thereupon, enter in the docket-book, kept by said clerk for the docketing of judgments in said office, the amount of the penalty or fine and costs imposed, as a judgment against the person or persons, corporation, association or copartnership so convicted and sentenced, and in favor of the state commissioner of excise, and said county clerk shall also enter in the docket of said judgment a brief

statement setting forth the fact that said judgment is for a fine or penalty imposed for violation of the "liquor tax law," and said county clerk shall immediately mail or deliver to said county treasurer or special deputy commissioner for such county a duly certified transcript of said judgment. If the fine and costs imposed be paid into court, the said officer or clerk of the court shall at once pay to said county treasurer, or special deputy commissioner, the amount of such fine and costs, who shall give his receipt therefor, and shall, at the request of the judgment debtor, execute and deliver a satisfaction of said judgment. If said judgment shall not be paid within five days after such conviction and sentence, the clerk of said county shall issue an execution against the property of said judgment debtor or debtors, against whom said judgment is docketed, directed to the sheriff of the county, who shall forthwith proceed to collect the amount due on said judgment, together with his legal fees and costs, by levy and sale, in the manner now provided by law for the collection of executions against property, of any goods, chattels, furniture, fixtures, and leasehold interests, or other property of such judgment debtor or debtors, wherever found. Such levy shall take precedence of any and all liens, mortgages, conveyances, or incumbrances taken or had on such property, subsequent to the docketing of said judgment in said clerk's office, and no property of such judgment debtor or debtors shall be exempt from such levy and sale, and all moneys collected upon execution under the provisions of this act shall be paid by the officer collecting the same, less his legal fees and costs thereon, to such county treasurer, or special deputy commissioner, who shall apportion and account for the same as provided by this act. In case such judgment debtor or debtors shall have given the bond provided for in section eighteen of this act, such county treasurer, or special deputy commissioner may proceed to collect the amount of such judgment, together with the costs of collection, from the sureties on such bond, by due process of law, and the issuing of an execution under the provisions of this act shall not be a condition precedent to the enforcement of the provisions and penalties of any bond given by such judgment debtor or debtors, pursuant to any of the provisions of this act.

§ 37. **Duties of public officers in relation to complaints and prosecutions under this act.**— It shall be the duty of the special deputy commissioners and special agents, and of every county treasurer, sheriff, deputy sheriff, police officer or constable having notice or knowledge of any violation of the provisions of this act, to immediately notify the district attorney of the county in which such violation occurs, by a statement under oath of the fact of such violation, and it shall be the duty of such district attorney when complaint on oath is made of such violation, forthwith to prosecute any person so violating any of the provisions of this act, and for each and every violation thereof. All officers authorized to make arrests in any city, town or village, and the special agents appointed under section ten of this act may in the performance of their duties enter upon any premises where the traffic in liquors is carried on or liquors are exposed for sale at any time when such premises are open.

§ 38. **Penalties for neglect of public officers to perform their duty under this act.**— Any officer who shall neglect or refuse to perform his duty under the provisions of this act, shall be liable to a penalty of five hundred dollars for each and every offense, and if such officer be a county treasurer or district attorney, he shall be removed from office by the governor after hearing and determination thereon and decision that such neglect or refusal has occurred. Any citizen may prefer charges to the governor under this section.

Article 10, section 1, N. Y. Cons., provides for removal of District Attorney from office.

§ 39. **Recovery of damages in a civil action.**— A recovery may be had in a civil action of the damages suffered by reason of the intoxication of any person, from any corporation, association, copartnership or person who shall by selling or giving away liquors have caused such intoxication, if the person or one of the persons suffering such damage shall, previous to such selling or giving away, have given written notice to such corporation, association, copartnership or person, or to their agents or employes, or to the person so selling or giving away, forbidding such selling or giving away liquors to the person whose intoxication shall have caused such damage; or such damage may be recovered from any

corporation, association, copartnership or person owning or renting or permitting the occupation of any building or premises where such selling or giving away of liquors shall have occurred, jointly with the corporation, association, copartnership or person selling or giving away, or severally when the notice herein provided for shall have been given to such owners or their authorized agents, and not otherwise.

This supersedes section 40, Excise Law and Civil Damage Act, chapter 646 of 1873, repealed by this act.

§ 40. **Intoxication in a public place.** — Any person intoxicated in a public place is a disorderly person and may be arrested without warrant while so intoxicated, and shall be punished by a fine of not less than three nor more than ten dollars, or by imprisonment not exceeding six months or by both such fine and imprisonment. The purchase or procurement of liquor for any person to whom it is forbidden to sell liquor under section thirty of this act is a misdemeanor, punishable upon conviction, by a fine of not less than ten dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment.

§ 41. **Employment of persons addicted to intoxication by common carriers.** — Any person or officer of an association or corporation engaged in the business of conveying passengers or property for hire, who shall employ in the conduct of such business, as an engineer, fireman, conductor, switch-tender, train dispatcher, telegrapher, commander, pilot, mate, fireman or in other like capacity, so that by his neglect of duty the safety and security of life, person or property so conveyed might be imperiled, any person who habitually indulges in the intemperate use of liquors, after notice that such person has been intoxicated, while in the active service of such person, association or corporation, shall be guilty of a misdemeanor.

Similar to section 39, Excise Law.

§ 42. **Violations of this act generally.** — Any willful violation by any person of any provision of this act for which no punishment or penalty is otherwise prescribed, shall be a misdemeanor.

§ 43. **Distribution of copies of this act by the secretary of state.** — Immediately upon this act becoming a law the secretary

of state shall cause twenty thousand copies thereof to be printed, of which five thousand shall be printed in the German language and shall transmit as soon as possible to the county treasurers and to the special deputy commissioners such number as may in his judgment be proper for the use of such treasurers and commissioners, and for distribution by them to persons trafficking in liquors and others.

§ 44. **Laws, grants and charters repealed; saving clause.** The provisions of any special or local law, grant or charter in conflict with this act are hereby repealed and annulled. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed, but the provisions of any such relating to the transfer, cancellation or revocation of a license, the collection of penalties or prosecutions for the violation of the law shall continue in force as to any license, which has not expired at the time this act takes effect, until the expiration thereof, subject to the provisions of this act, in relation to the performance of the duties of boards of excise or excise commissioners by special deputies or special agents designated by the state commissioner of excise. The repeal of any law by this act shall not revive a law repealed thereby, but such repeal shall not impair any act done or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, under or by virtue of any law so repealed, and the same may be asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such law had not been repealed. All actions and proceedings, civil or criminal, commenced under or by virtue of a law so repealed and pending immediately prior to the taking effect of this act, may be prosecuted and defended to final effect in the same manner as they might have been under the laws then existing, subject to the provisions of this act authorizing special deputy commissioners or special agents designated by the state commissioner of excise to perform the duties of boards of excise.

§ 45. **When to take effect.** — This act shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Laws of—	Chapter.	Section.
1835	272	All.
1842	157	3.
1843	97	1, 2
1872	143	All.
1873	646	All.
1877	419	All.
1887	679	All.
1892	360	All.
1892	401	All.
1892	402	All.
1892	403	All.
1892	404	All.
1893	143	All.
1893	221	All.
1893	271	All.
1893	479	All.
1893	480	All.
1893	481	All.
1894	294	All.
1894	720	All.
1895	744*	All.
1895	811	All.

*Error, should have been Chap. 774. Chap. 774 repealed by General Repeal Act, Chap. 548 of 1896; in effect June 1, 1896

$\_\_\_\_\_$ SERIES OF 1896.

(Sample Form.)
(Insert Suitable Device.)

No._____ SERIES OF 1896.

STATE OF NEW YORK.

LIQUOR TAX CERTIFICATE.

*RECEIVED from*_____*the sum of*_____*dollars for excise tax on the business of trafficking in liquor under subdivision*_____*of section eleven of the Liquor Tax Law.*

*The business to be carried on at*_____*in the town of*_____*for the period represented by the coupon or coupons hereto attached.*

*Dated at*_____

_____

_____189__. *Special Deputy Commissioner for the County of*_____

*(Or County Treasurer of*_____*County),*

*State of*_____

SEVERE PENALTIES are imposed for neglect or refusal to place and keep this certificate conspicuously in your place of business.

Coupon for LIQUOR TAX CERTIFICATE No. for April 1897.
Coupon for LIQUOR TAX CERTIFICATE No. for March 1897.
Coupon for LIQUOR TAX CERTIFICATE No. for Feb. 1897.
Coupon for LIQUOR TAX CERTIFICATE No. for Jan. 1897.
Coupon for LIQUOR TAX CERTIFICATE No. for Dec. 1896.
Coupon for LIQUOR TAX CERTIFICATE No. for Nov. 1896.
Coupon for LIQUOR TAX CERTIFICATE No. for Oct. 1896.
Coupon for LIQUOR TAX CERTIFICATE No. for Sep. 1896.
Coupon for LIQUOR TAX CERTIFICATE No. for Aug. 1896.
Coupon for LIQUOR TAX CERTIFICATE No. for July 1896.
Coupon for LIQUOR TAX CERTIFICATE No. for June 1896.
Coupon for LIQUOR TAX CERTIFICATE No. for May 1896.

Forms 2, 8.

Form 2. Sections 17, 26, 27.

APPLICATION FOR LIQUOR TAX CERTIFICATE BY INDIVIDUAL.

To..... .. Deputy Commissioner (or County Treasurer):

Your petitioner ....., respectfully shows that he is twenty-one years of age; that he is a citizen of the United States; that he is a resident of the State of New York; that he has not been convicted of a felony; that he has not had a license revoked under the laws in force immediately prior to the passage of the Liquor Tax Act; that the premises sought to be used are not used as a court house, or occupied solely for State, county or municipal purposes; that the only person interested in the premises to authorize which such liquor tax certificate shall be used is (or are) your petitioner ....., (if any others, name them); that the premises where such business is to be carried on is at ..... street; that the business to be carried on in connection with the liquor business or on the same premises is .....; that the traffic in liquors may be lawfully carried on upon said premises, and such traffic is not within any of the prohibitions of the Liquor Tax Act.

Wherefore, your petitioner makes this application in pursuance of the Liquor Tax Act for a tax certificate to sell under section 11, subdivision ...., at the place known as ....., in the city of .....

Dated this .... day of ....., 189....

.....

STATE OF NEW YORK, } *ss.:*
County of..... .. }

..... being duly sworn deposes and says that he is the applicant herein and that he has made the foregoing application; that he has read the same and knows the contents thereof, and that the statements made therein are true.

.....

Subscribed and sworn to before me,
this .... day of ....., 18..

.....

.....

(If premises were licensed before the passage of the Liquor Tax Act, such statement should be made in order to show why the consent of the owner of the building was not annexed.)

(Applicant should state that he was licensed prior to the passage of this act to show that the consent of two-thirds of the property owners within 200 feet of the licensed premises is not necessary.)

Form 3. Sections 17, 26, 27.

APPLICATION FOR TAX CERTIFICATE BY PARTNERSHIP.

To..... ..... Deputy Commissioner (or County Treasurer):

Your petitioners, ..., respectfully show that they are a partnership doing business under the firm name and

Form 4.

style of .....; that the names and residences of the several persons applying as partners are .....
.....
.....
.....;
that the members of such partnership owning at least one-half interest in the business thereof are residents of the State of New York and citizens of the United States.

(Follow preceding form; the verification may be made by one partner on behalf of all, in which case add the following verification.)

STATE OF NEW YORK, } *ss.:*
County of..... }

..... being duly sworn, deposes and says that he is a member of the partnership making the above application; that he was duly authorized by the members of said partnership to make and sign the same on behalf of the partnership, and made and signed the same accordingly; that he has read the same and knows the contents thereof; that the statements made therein are true.

.....

Subscribed and sworn to before me,
this .... day of ....., 18..

.....

Form 4. Sections 17, 26, 27.

APPLICATION FOR TAX CERTIFICATE BY CORPORATION.

To ....*Deputy Commissioner (or County Treasurer):*

Your petitioner, ..., respectfully shows that he is the president (or secretary or other officer) of .....; that said corporation is a domestic corporation organized under the laws of the State of New York; that the directors thereof on the ..... day of ....., 189...., by resolution duly adopted, authorized your petitioner to make this application in pursuance of the Liquor Tax Law.

.....

(Follow as in Form 2, after recital of residence; add the verification as follows:)

STATE OF NEW YORK, } *ss.:*
County of..... }

....., being duly sworn, deposes and says that he is the president (or other officer) of the ....; (state corporate name) that he is the person named in, and who signed the foregoing application; that he has read the same and knows the contents thereof, and that the statements made therein are true.

.....

Subscribed and sworn to before me,
this .... day of ....., 18..

.....

.....

Forms 5–8.

Form 5. Sections 17, 26, 27.

CONSENT OF OWNER OF PREMISES.

I, ..., owner of the premises known as .... street, do hereby consent that the said premises may be used as a place where trafficking in liquors may be carried on under the Liquor Tax Act.

.....

STATE OF NEW YORK, *County of*..... .... } *ss.:*

On this ..... day of ....., before me personally appeared ....., to me known to be the person who executed the foregoing consent, and duly acknowledged the same.

.....

Form 6. Sections 17, 26, 27.

CONSENT OF AUTHORITIES HAVING CUSTODY AND CONTROL OF PARK FOR THE THE TRAFFICKING OF LIQUORS THEREIN.

We, ..., trustees (or directors, etc.,) having the custody and control of ..... park, do hereby consent that ..... may carry on in such park the business of trafficking in liquors under the provisions of the Liquor Tax Act of the State of New York.

.....

(Follow acknowledgment as in Form 5.)

Form 7. Sections 17, 26, 27.

CONSENT OF PROPERTY OWNERS WITHIN TWO HUNDRED FEET OF BUILDING WHERE TRAFFIC IN LIQUORS IS TO BE CARRIED ON.

We, ..., owners of buildings used exclusively for dwellings within 200 feet of the premises known as .... street, do hereby consent that traffic in liquors be carried on upon said premises at ..... street, during the terms commencing on the ..... day of ....., 189...., and ending on the ..... day of ....., 189....

.....

(Follow acknowledgment as in Form 5 and 6.)

Form 8. Sections 17, 26, 27.

APPLICANT'S BOND UNDER SECTION 18, LIQUOR TAX LAW.

Whereas, ..., of the city of ....., is an applicant to the special deputy (or county treasurer) of .....,

Form 9.

for a tax certificate to sell ..... under subdivision ...., of section 11, of the Liquor Tax Law,

Now, therefore, we, the said ....., as principal, and ..... and ....., as sureties, do hereby undertake in the sum of $250, by and with the People of the State of New York, that if the tax certificate applied for shall be granted to said ....., at the time the business shall be carried on, we will not suffer the premises to become disorderly, or suffer or permit any gambling to be done in the place designated by the tax certificate, and in which the traffic in liquors is to be carried on, or in any yard, booth, garden or portion thereof or connected therewith, and that we will not permit any violation of the provisions of the Liquor Tax Law.

Dated this .... day of ....., 189....

.....

STATE OF NEW YORK, }
County of. ..... }

On this ..... day of ....., 189...., before me the subscriber personally came ....., ..., ..., known to me to be the persons described in, and who made and signed the foregoing bond, and severally acknowledged that they made and signed and executed the same for the purposes therein set forth.

.....
Notary Public.

STATE OF NEW YORK, }
County of .... }

....., being duly sworn, deposes and says that he is a resident freeholder (or householder) of the city of ....., (village or town) in the county of ....., and worth the sum of (twice the amount of the tax for one year, but in no case for less than $500), over and above all debts owed or incurred by him exclusive of property exempt by law from execution, and that he has not within five years, had a tax certificate revoked under the provisions of this act.

.....

Subscribed and sworn to before me,
this .... day of ....., 18..

.....

Form 9. Section 27.

PETITION TO CHANGE TAX CERTIFICATE FROM PLACE TO PLACE.

To ....*Deputy Commissioner (or County Treasurer)*:

Your petitioner, ..., respectfully shows that on the ..... day of ....., 189...., a tax certificate under section 11, subdivision ...., of the Liquor Tax Act was granted to your petitioner upon the premises situate at No. ..... street, in the city of ....., which tax certificate does not expire until the ..... day of ....., 189...., and that your petitioner desires to carry on

Form 10.

said business at the premises situated at No. ..... street, in the city of .....,

Wherefore, your petitioner hereby makes this application to carry on said business upon such other premises situated at No. ..... street, during the balance of the term of said tax certificate.

Dated this .... day of ....., 189....

.....

(Applicant must further make a new application as provided under section 17, and file a new bond, as provided under section 18.)

Form 10. Section 28.

APPLICATION TO SELL, ASSIGN OR TRANSFER TAX CERTIFICATE.

To .....Deputy Commissioner (or State Treasurer):

Your petitioner, ..., respectfully shows that on the ..... day of ....., 189...., a tax certificate under section 11, subdivision ...., of the Liquor Tax Act was granted to your petitioner upon the premises situated at No. ..... street, in the city of ....., which tax certificate does not expire until the ..... day of ....., 189....; that your petitioner desires to transfer said license to ....., of said city of ....., in order to enable said ..... to traffic in liquors pursuant to the provisions of the Liquor Tax Act.

Wherefore, your petitioner hereby makes application for permission to transfer said tax certificate to said ..... during the balance of the term of said tax certificate.

Dated this .... day of ....., 189....

.....

(Transferee must make a new application as required under section 17 of this act, and file a new bond as required under section 18 of this act.)

THE DOMESTIC COMMERCE LAW,

As amended to the commencement of the session of 1897.

L. 1896, ch. 376 — An act relating to domestic commerce law, constituting chapter thirty-four of the general laws.

[Became a law April 28, 1896, taking effect October 1, 1896.]

CHAPTER XXXIV OF THE GENERAL LAWS.

Article I. Weights and measures. (§§ 1-17.)
II. Regulations of trade and business. (§§ 20-40.)
III. Auctions and auctioneers. (§§ 50-54.)
IV. Peddlers. (§§ 60-65.)
V. Flour and meal. (§§ 70-79.)
VI. Beef and pork. (§§ 90-92.)
VII. Hops and hay. (§§ 100-105.)
VIII. Laws repealed; when to take effect. (§§ 110-11.)

ARTICLE I.

Weights and Measures

Section 1. Short title.
2. Description of weights and measures.
3. The unit of length and surface.
4. Units of weights.
5. Units of capacity.
6. Heap measure.
7. Measure for bran.
8. Number of pounds to the bushel.
9. Barrels of apples, quinces, pears and potatoes.
10. Construction of contracts.
11. Duties of state superintendent of weights and measures.
12. Copies of standard weights and measures.
13. County sealer; duty of supervisors.
14. Town sealer.
15. City sealer.
16. Weights and measures to be sealed; fees.
17. Delivery of standards to successor in office.

Section 1. Short title.— This chapter shall be known as the domestic commerce law.

§ 2. Description of weights and measures.— The standard weights and measures now in charge of the secretary of state, being the same that were furnished to this state by the government of the United States, in accordance with a joint resolution of congress, approved June fourteen, eighteen hundred and thirty-six, and consisting of one standard yard measure and one set of standard weights, comprising one Troy pound, and nine avoirdupois weights of one, two, three, four, five, ten, twenty, twenty-five and fifty pounds respectively; one set of standard Troy ounce weights, divided decimally from ten ounces to the one ten-thousandth of an ounce; one set of standard liquid capacity measures, consisting of one wine gallon of two hundred and thirty-one cubic inches, one half gallon, one quart, one pint and one-half pint measure; and one standard half bushel, containing one thousand and seventy-five cubic inches and twenty-one hundredths of a cubic inch, according to the inch hereby adopted as standard shall be the standards of weight and measure throughout this state.

§ 3. The unit of length and surface.— The unit or standard measure of length and surface, from which all other measures of extension, whether lineal, superficial or solid, shall be derived and ascertained, is the standard yard designated in this article, which is divided into three equal parts called feet, and each foot into twelve equal parts called inches. For measures of cloths and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths.

The rod, pole or perch, contains five and one-half yards; the mile, one thousand seven hundred and sixty yards. The chain for measuring land is twenty-two yards long and is divided into one hundred equal parts called links.

The acre for land measure shall be measured horizontally and contain ten square chains, equivalent in area to a rectangle sixteen rods in length and ten in breadth; six hundred and forty acres being contained in a square mile.

§ 4. Units of weight.— The units or standards of weight from which all other weights shall be derived and ascertained, shall be the standard of avoirdupois and Troy weights designated in this article. The avoirdupois pound bears to the Troy pound the ratio of seven thousand to five thousand seven hundred

and sixty, and is divided into sixteen equal parts called ounces. The hundred weight consists of one hundred avoirdupois pounds and twenty hundred weight are a ton. The Troy ounce is equal to the twelfth part of a Troy pound.

§ 5. **Units of capacity.**— The units or standards of measure of capacity or liquids from which all other measures shall be derived and ascertained shall be the standard gallon and its parts designated in this article. The barrel is equal to thirty-one and one-half gallons and two barrels are a hogshead. All other measures of capacity for liquids shall be derived from the liquid gallon by continual division by the number two, so as to make half gallons, quarts, pints, half pints and gills.

The unit or standard measure of capacity for substance, not liquids, from which all other measures of such substances shall be derived and ascertained, is the standard half bushel mentioned in this article.

The peck, half peck, quarter peck, quart and pint measures for measuring commodities which are not liquids shall be derived from the half bushel by successively dividing that measure by two.

§ 6. **Heap measure.**— The measures of capacity for all commodities commonly sold by heap measure shall be the half bushel and its multiples and subdivisions. The measures used to measure such commodities shall be cylindrical, with plain and even bottom, and of the diameter of nineteen and one-half inches from outside to outside if a bushel; fifteen and one-half inches if a half bushel, and twelve and one-third inches if a peck.

All commodities sold by heap measure shall be duly heaped up in the form of a cone, the outside of the measure to be the limit of the base of the cone, and the cone to be as high as the commodities will admit.

§ 7. **Measure for bran.**— The standard measure of capacity for bran and shorts shall be forty quarts to the bushel. The measure used for measuring such commodities shall be round, with a plain or even bottom, and it shall be thirteen and one-half inches in diameter in the clear at the top, and fifteen inches and one-half in diameter in the clear at the bottom and of sufficient depth to contain such number of quarts, when stricken with a round, straight stick or roller of uniform diameter.

§ 8. **Number of pounds to the bushel.**— Whenever any commodity specified in this section is sold by the bushel, and no

special agreement is made by the parties as to the mode of measuring, the bushel shall consist of seventy pounds of lime or coarse salt; sixty pounds of wheat, peas, potatoes, clover-seed or beans; fifty-seven pounds of onions; fifty-six pounds of Indian corn, rye or fine salt; fifty-five pounds of flaxseed; fifty-four pounds of sweet potatoes; fifty pounds of corn meal, rye meal or carrots; forty-eight pounds of barley, apples or buckwheat; forty-five pounds of herdsgrass, timothy seed or rough rice; forty-four pounds of Sea Island cotton seed; thirty-three pounds of dried peaches; thirty-two pounds of oats; thirty pounds of upland cotton seed; twenty-five pounds dried apples; twenty-pounds of bran or shorts.

§ 9. **Barrels of apples, quinces, pears and potatoes.**—A barrel of apples, pears, quinces or potatoes shall represent a quantity equal to one hundred quarts of grain or dry measure, and every person buying or selling such articles in this state, by the barrel, shall be understood as referring to the quantity specified in this section, but when potatoes are sold by weight the quantity constituting a barrel shall be one hundred and seventy-two pounds. No person shall make, or cause to be made, barrels holding less than the quantity herein specified, knowing or having reason to believe that the same are to be used for the sale of apples, quinces, pears or potatoes. No person in this state shall use barrels hereafter made for the sale of such articles of a size less than the size specified in this section. Every person violating any provision of this section shall forfeit to the people of the state the sum of five dollars for every barrel put up, made or used in violation of such provision.

§ 10. **Construction of contracts.**—All contracts made within the state for work to be done, or for the sale or delivery of personal property, by weight or measure, shall be taken and construed according to the standards of weights and measures adopted in this article.

§ 11. **Duties of state superintendent of weights and measures.** —The state superintendent of weights and measures shall take charge of the standards adopted by this article as the standards of the state; cause them to be kept in a fire-proof building belonging to the state, from which they shall not be removed, and take all other necessary precautions for their safe-keeping. He shall correct the standards of the several cities and counties

and provide them with such standards, balances and other means of adjustment as may be necessary, and, as often as once in ten years, compare the same with those in his possession, and he shall have a general supervision of the weights and measures of the state.

§ 12. **Copies of standard weights and measures.**— The state shall have a complete set of copies of the original standards of weights and measures adopted by this article, which shall be used for adjusting county standards, and the original standards shall not be used except for the adjustment of this set of copies and for scientific purposes.

The state superintendent of weights and measures shall see that the foregoing provisions of this section are complied with and procure such apparatus and fixtures, if the same have not already been procured, as are necessary in the comparison and adjustment of the county standards.

He shall cause all the city and county standards to be impressed with the emblem of the United States, the letters "N. Y.," and such other device as he shall direct for the particular county.

§ 13. **County sealer; duty of supervisors.**— There shall be a county sealer of weights and measures in each county, who shall be appointed by the board of supervisors and hold office during the pleasure of such board. He shall take charge of and safely keep the county standards, provide the several towns with such standard weights, measures and balances, stamped with such devices as the board of supervisors may direct, as may be wanting, and compare the town standards with those of the county as often as once in five years. In towns where there are no standards or no town sealer, he shall perform the duties of a town sealer.

The board of supervisors of each county shall procure the proper standards for each town therein not provided therewith, and the expense thereof shall be paid by such town.

§ 14. **Town sealer.**— There shall be a town sealer of weights and measures in each town, to be appointed by the town board and hold office during its pleasure. He shall take charge of and safely keep the town standards and see that the weights, measures and all apparatus used in the town which are brought to him for that purpose, conform to the town standards.

§ 15. City sealer.—Where not otherwise provided by law, there shall be a city sealer of weights and measures to be appointed by the common council of each city, and hold office during the pleasure of said council. He shall perform in his city the duties of a town sealer in a town. Where it is provided by law that some other city officer shall perform the duties of a sealer, the provisions of this article shall apply to such officer, so far as the same are not inconsistent with the law under which he acts.

§ 16. Weights and measures to be sealed; fees.—Whenever the sealer of a city, county or town compares weights and measures and finds that they correspond or causes them to correspond with the standards in his possession, he shall seal and mark such weights and measures with the appropriate devices.

Each sealer shall receive for his services the following fees:

For sealing and marking every beam, ten cents.

For sealing and marking measures of extension, ten cents per yard, not exceeding fifty cents for any one measure.

For sealing and marking every weight, five cents.

For sealing and marking liquid and dry measures, ten cents for each measure.

He shall have a reasonable compensation for making weights and measures conform with the standards in his possession.

§ 17. Delivery of standards to successor in office.—Whenever the state superintendent of weights and measures resigns, is removed from office or removes from the city of Albany, or when any city, county or town sealer resigns, is removed from office or removes from the city, county or town in which he has been appointed or elected, he shall deliver to his successor in office all the standard beams, weights and measures in his possession, and on the death of any such sealer of weights and measures his representatives shall in like manner deliver to his successor in office such beams, weights and measures. In case of refusal or neglect to deliver such standards entire and complete, as in this section required, the successor in office may maintain an action against the person or persons so refusing or neglecting, and recover double the value of the standards not delivered and double costs. One-half of the damages recovered in every such action shall be retained by the person so recovering, and the other shall be applied to the purchase of such standards as may be required in his office.

ARTICLE II.

Regulations of Trade and Business.

Section 20. Standard of domestic distilled spirits.
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23. Standard test and storage of refined petroleum and kerosene oil.
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38. Duties of the director of New York state agricultural experiment station relating to fertilizers.
39. Sale of agricultural products on commission.
40. Duty of hotel keepers to provide fire-escapes.

Section 20. **Standard of domestic distilled spirits.**— Domestic distilled spirits, at a temperature of sixty degrees Fahrenheit, which have a specific gravity of nine thousand three hundred and thirty-five as compared with the gravity of pure distilled water at the same temperature estimated at ten thousand, shall be deemed first proof.

The strength of any such spirits below or above first proof shall be calculated decimally, or by the percentage in reference to such standard, and shall be denoted as so many per centum

below or above first proof, as the actual difference in strength shall be.

§ 21. **Sperm oils.**—Pure sperm oil, at the temperature of sixty degrees Fahrenheit, shall have the same specific gravity as domestic distilled spirits of forty-eight per centum above first proof at the same temperature; and whale oil, at that temperature, shall have the same specific gravity as such spirits of eight per centum above first proof, as established by this article. The specific gravity of such oils may be tested by a hydrometer or an oleometer. The secretary of state shall furnish, at the expense of the state, to the clerk of each county, a correct oleometer, graduated to show the difference between pure sperm oil and whale oil, which shall be kept by such clerk for public use as a standard and true test of pure sperm oils. All oils under the name of sperm, lamp, summer, fall and winter oils shall be deemed to be sold as and for pure sperm oil. All oils sold under the name of sperm, lamp, summer, fall or winter oils, which shall be adulterated from pure sperm oil, shall be deemed whale oil, and the vendor shall be liable to the purchaser for the difference in value between pure sperm and crude whale oil.

§ 22. **Storage of petroleum.**— Crude petroleum, earth or rock oil, or any of its products, shall not be kept on sale or stored in any place or building within the corporate limits of any city in this state, except in the city of New York, unless in detached and properly ventilated warehouses, the exterior walls of which are stone, brick or iron, specially adapted to that purpose, with raised sills at least two feet high, or the ground floor of which is at least two feet below the level of the street or adjoining land, so as to effectually prevent the overflow of such substances beyond the premises where kept or stored.

No part of such warehouses shall be occupied as a dwelling, and if less than fifty feet from any adjacent building, such warehouse must be separated therefrom by a brick or stone wall at least ten feet in height and sixteen inches thick.

None of such articles shall be allowed to remain on the sidewalk beyond the front line of any building or in the street, a longer time than is actually necessary for the storage, shipment or delivery of the same, nor after sunset.

§ 23. **Standard test and storage of refined petroleum and kerosene oil.**— Refined petroleum or kerosene oil shall not be kept on sale or stored in any such city, the fire test of which shall be

less than one hundred and ten degrees Fahrenheit, determined by authorized inspectors using G. Tagliabue's or other improved instruments; and the barrels or packages containing the same shall be legibly stamped or marked with the inspector's official stamp or mark. If stored above the cellar or basement of any building and in barrels of not over forty-five gallons each, or in metallic vessels or tanks for the convenience of retailing, the quantity so stored shall not exceed the contents of ten barrels, unless packed in hermetically sealed metallic packages when such quantity shall not exceed one hundred barrels. If stored in cellars or basements surrounded by walls of brick or stone, and at least two feet below the level of the sidewalk, street or adjacent land, such quantity shall not exceed the contents of one hundred and fifty barrels, unless stored in warehouses specially adapted for the purpose pursuant to this article. No more than five barrels thereof shall be kept or stored in any building occupied wholly or in part as a dwelling.

Not more than ten barrels of benzine or naphtha shall be kept or stored in any building, and not more than three barrels thereof in any building any part of which is occupied as a dwelling.

This and the preceding section shall not prevent the storage of crude or refined petroleum in wrought-iron tanks detached from any building and specially adapted for that purpose, or in other tanks so constructed that the top is at least two feet below the street or the adjoining land and covered with at least one foot of earth, and appurtenant to or connected with a refinery, with the approval of the inspectors of buildings, fire marshal or other proper authorities.

§ 24. **Standard and storage of illuminating oils.**— No person shall manufacture or have in his possession or sell or give away for illuminating or heating purposes in lamps or stoves within this state, any oil or burning fluid wholly or partly composed of naphtha, coal oil, petroleum or products thereof, or of other substances or materials emitting an inflammable vapor which will flash at a temperature below one hundred degrees Fahrenheit, according to the instruments and tests approved by the state board of health.

No such oil or fluid which will ignite at a temperature below three hundred degrees Fahrenheit shall be burned or be carried as freight in any passenger or baggage car or passenger boat moved by steam or electric power in this state, or in any stage

or street car, however propelled, except that coal oil, petroleum and its products may be carried, when securely packed in barrels or metallic packages, in passenger boats propelled by steam when there are no other public means of transportation.

The state board of health shall prescribe the tests and instruments by which such oils and fluids shall be tested, and shall adopt such measures to enforce the provisions of this section and such rules and regulations for collecting, examining and testing samples of such oils and fluids as to them may seem necessary. The public analysts employed by or under the direction of such board shall test the samples of such oils and fluids as may be submitted to them under the rules of the board, for which they shall receive such reasonable compensation as the board may allow.

Naphtha and other illuminating products of petroleum which will not stand the flash test required by this section, may be used for illuminating or heating purposes only in the following cases:

1. In street lamps and open air receptacles apart from any building, factory or inhabited house in which the vapor is burned.

2. In dwellings, factories or other places of business when vaporized in secure tanks or metallic generators made for that purpose, in which the vapor so generated is used for lighting or heating.

3. For use in the manufacture of illuminating gas in gas manufactories situated apart from dwellings and other buildings.

Any person violating any provision of this section shall forfeit to the city or village, or if not in a city or village to the town in which the violation occurs, the sum of one hundred dollars for every such violation, and for every day or part of a day that such violation occurs.

This section shall not apply to the city of New York, and shall not supersede but shall be in addition to the ordinances or regulations of any city or village made pursuant to law for the inspection or control of combustible materials therein.

§ 25. **Inspectors of storage.**— The inspectors of buildings or other proper authorities in every such city shall make an examination of all the premises where any of the articles or substances specified in the preceding sections of this article are kept or stored, and report any violation thereof to the author-

ities of the city whose duty it is to enforce the provisions thereof.

§ 26. **Fire and light within one hundred and fifty feet of warehouses in the counties of New York, Kings and Queens prohibited.**— No person shall bring, have, keep or use or suffer or permit to be brought, kept, had or used on board of any ship, vessel, canal boat, barge, lighter, boat or other craft lying at or within the distance of one hundred and fifty feet of any warehouse, yard, shed, dock, pier, bulkhead, wharf or other place within the counties of New York, Kings or Queens at, in or upon which petroleum oil or any of its products is stored or is kept for export or in quantities exceeding ten thousand gallons, or at, in or upon any such warehouse, shed, yard, dock, pier, bulkhead or other place, any lighted match or lighted cigar, cigarette or pipe, or any fire or light of any kind, except in strict conformity to the written permission of the owner, lessee or superintendent of such warehouse, yard, shed, dock, pier, bulkhead, wharf or other place, specifying the fire or light to be kept, had or used, the particular purpose for and the place or spot at which the same may be so kept, had or used and the particular manner of keeping, having and using the same.

This section shall not apply to steam tugs while transacting their ordinary business nor to steam fire engines engaged in extinguishing fires.

§ 27. **Penalties and the enforcement thereof.**— Every person violating the provisions of this article, relating to the test for refined petroleum and oil, shall forfeit to the people of the state the sum of five hundred dollars for each violation.

Every person violating any provision of this article, relating to the storage or keeping for sale of any article, substance or product herein specified, shall forfeit to the people of the state, the sum of two hundred and fifty dollars for each day and part of a day that such violation continues.

Every person violating any provisions of this article, relating to the encumbering of any sidewalk or street shall forfeit the sum of twenty-five dollars for each day and part of a day that such violation continues, to be paid, if in a city or village, to such city or village, and elsewhere, to the town in which such violation occurs.

The mayor and common council of every city or other proper authorities thereof, shall, by ordinance or resolution, provide for the proper enforcement of the provisions of the preceding sections of this article, and in every such city, the moneys collected by the city as penalties for the violation of any such ordinance or resolution or of any of such provisions, shall be applied to the support of the poor therein, except in Brooklyn, where they shall be paid into the widows and orpans' fund of the fire department, and except in Buffalo, where they shall be paid to the treasurer of the firemen's benevolent association of the city for its use and benefit.

§ 28. **Trade marks.**—Any person engaged in manufacturing bottling, or selling any beverage, medicine, perfumery or mixture in this state, put up by him for sale in any vessel or receptacle, with his name or other private mark branded, stamped or marked thereupon, may file in the office of the secretary of state and in the office of the county clerk of the county where the same is manufactured, bottled, or put up for selling, a description of the name or other private mark so branded, stamped or marked thereupon, and publish the same once a week for at least three weeks successively in a newspaper published in said county, except in New York, and Kings, where such publication shall be for the same length of time daily in two newspapers therein, and he shall thereupon be deemed the proprietor of such name or mark, and of every vessel or receptacle upon which it may be branded, stamped or placed. No person, other than such proprietor, shall fill for any purpose, any such vessel or receptacle so branded, stamped or marked or from which any such brand, stamp, mark, name or other device has been removed, defaced or obliterated, nor remove, deface or obliterate the same or place other brands, stamps, marks, names or devices upon any such vessel or receptacle without the written permission of such proprietor, or unless there has been a sale to such person of such vessel or receptacle exclusive of the contents thereof by such proprietor.

No person other than such proprietor shall, without his permission use, traffic in, purchase, sell, dispose of, convert, mutilate, destroy or willfully or unreasonably refuse to return or deliver to such proprietor on demand, any such vessel or receptacle so branded, stamped or marked belonging to such proprietor.

Any person violating any provision of this section shall forfeit to such proprietor one hundred dollars for each such violation.

Possession of any such vessel or receptacle without the consent of the proprietor of the trade-mark thereupon, shall be presumptive evidence of such violation.

§ 29. **Unlawful detention of milk cans.**— No person shall, without the consent of the owner or shipper, or his agent, use, sell, dispose of, buy or traffic in any can, belonging to any dealer in or shipper of milk or cream in this state, or which may be shipped to any town, village or city in the state, which can has the name or initials of such owner, dealer or shipper stamped, marked or fastened thereupon, or willfully mar, erase, or change by re-marking or otherwise, such name or initials.

If any person, without the consent of such owner, dealer or shipper, or his agent, uses, sells, disposes of, buys, traffics in or has in his possession or under his control any such can, it shall be presumptive evidence that such use, sale, disposal, purchase, traffic or possession is unlawful.

Any such owner, dealer or shipper or his agent may take possession of any can used in violation of this section whenever found, and if filled or partly filled with milk or cream, and the person in whose possession it is found does not, when requested, immediately empty the same, such owner, dealer or shipper, or his agent, may empty the same into the street or elsewhere, and shall not be liable for damages for any act done pursuant to the provisions of this section.

A person violating any provision of this section shall forfeit to such owner or dealer or shipper or his agent the sum of fifty dollars for every such violation, and an action may be brought therefor in the name of any such agent without joining the real party in interest that he represents, and in any such action brought for any such violation different persons may be joined as plaintiffs, whether jointly or severally interested therein, and different persons may be joined as defendants therein, who have severally violated any such provision, and a recovery may be had in favor of one or more of such plaintiffs against one or more of such defendants.

Such action may be brought in a court of record having jurisdiction thereof, and the place of trial thereof may be laid in the

county where such owner, dealer or shipper resides at the time of the commencement thereof, and if laid in such county it shall not be changed for any cause or it may be brought in a justice's court or other court not of record having similar jurisdiction in the city or county where a violation of this section is committed; the district courts of the city of New York, shall have jurisdiction of such an action irrespective of the residence of any party or the location of the subject-matter.

If at the time of the issue of the summons in a court not of record, the plaintiff or his agent make affidavit that he has reason to believe and does believe that any defendant has any such can or cans secreted upon his premises, the justice or other magistrate or court issuing the summons must, without requiring an undertaking, grant an order for the arrest of the defendant, which order shall also contain a direction to the officer to whom the same is issued, immediately search the place or premises mentioned in said affidavit, and if any such can or cans are there found, to bring the same, together with the defendant or other persons in whose possession said can or cans are found, before such justice, magistrate or court. The proceedings may be amended at any time by adding parties or otherwise as justice may require; and the judgment may provide for the disposition of the can or cans found.

If upon the issue of any such process, the constable or other officer shall be unable to find the person or persons therein named, but shall find any can or cans as therein set forth, he shall bring such can or cans before such justice or magistrate, who shall thereupon proceed to determine the right of such complainant thereto, and if upon such hearing had thereon he shall be satisfied that such can or cans rightfully belong to such complainant, or that he is entitled to the possession thereof, he shall forthwith deliver the same into his possession or the possession of his agent.

The several superintendents of the railroad companies and the branches and connections thereof and steamboat lines operating their roads or lines, or any portion thereof in this state, shall have power to collect, gather and take into possession from any person or whenever found thereupon, any cans belonging to any such owner, dealer or shipper, and return the same to such owner, dealer or shipper, and may appoint an agent for that

purpose, and such superintendent and such agent appointed by him shall have the same power and authority under this section as an agent of such owner, dealer or shipper.

The certificate of such superintendent appointing such agent, duly acknowledged, shall be presumptive evidence of the appointment and authority of such agent.

Any person authorized by this section to seize and take into his possession any such cans may, in case of resistance, call to his aid any police officer or constable of the town, village or city, who shall, when so called on, assist him in seizing or taking possession of such cans.

§ 30. **Canned and preserved food.**— No packer of or dealer in hermetically sealed, canned or preserved fruits, vegetables or other articles of food within this state, excepting canned or condensed milk or cream, shall sell or offer the same for sale for consumption within this state, unless the cans or jars containing the same shall have plainly printed upon a label thereupon, with a mark or term clearly indicating the grade or quality of the articles contained therein, the name, address and place of business of the person or corporation canning or packing them, or the name of the wholesale dealer in the state selling or offering the same for sale, and the name of the state, county and city, town or village where packed, preceded by the words "packed at."

If containing soaked goods or goods put up from products dried or cured before canning, there shall also be printed upon the face of such label in good legible type, one-half of an inch in height and three-eighths of an inch in width, the word "soaked."

Goods imported from foreign countries of foreign manufacture shall not be subject to the provisions of this section.

Any person violating any of the provisions of this section shall forfeit to the city, village or town where the violation occurs, the sum of fifty dollars, if a retail dealer, and the sum of five hundred dollars if a wholesale dealer or packer.

§ 31. **Oysters in kegs or cans, how marked or branded.**— Every person engaged in putting up oysters for sale in kegs or cans, or offering them for sale in kegs or cans, not previously marked or branded, shall mark or brand such kegs or cans with the true quantity of oysters in pints, quarts or gallons, which they may respectively hold, and not more than one quarter of such quantity shall be liquid.

Every person violating any provision of this section shall forfeit to the city, village or town where the violation occurs, the sum of one hundred dollars for every such violation.

§ 32. **Fees and charges for elevators and warehouses.**— The maximum charge for elevating, receiving, weighing and discharging grain by means of floating and stationary elevators and warehouses in any city having a population of one hundred and thirty thousand or over, shall not exceed five-eighths of one cent a bushel. In the process of handling grain by means of floating and stationary elevators, the lake vessels or propellors, the ocean vessels or steam-ships and canal boats shall only be required to pay the actual cost of trimming or shoveling to the leg of the elevator when unloading, and trimming cargo when loading.

For every violation of any provision of this article, the person committing such violation shall forfeit to the people of the state the sum of two hundred and fifty dollars.

A person injured by a violation of this section, may recover any damages sustained from the person violating the same.

§ 33. **Analysis of commercial fertilizers to be furnished.**— All commercial fertilizers which shall be offered for sale, to be used in this state, shall be accompanied by an analysis stating the percentages contained therein of nitrogen or its equivalent of ammonia, of soluble and available phosphoric acid, the available phosphoric acid either to be soluble in water or in a neutral solution of citrate of ammonia as determined by the methods agreed on by the American Society of Agricultural Chemists, and of potash soluble in distilled water. A legible statement of the analysis of the goods and of the person, firm or corporation who have manufactured the same, shall be printed upon, or attached to each package of fertilizers offered for sale for use in this state; and where fertilizers are sold in bulk, to be used in this state, an analysis shall accompany the same with an affidavit that it is a true representation of the contents of the article or articles.

§ 34. **List and analysis of fertilizers to be furnished the director of the state agricultural experiment station at Geneva.**— Manufacturers residing in this state and agents or sellers of fertilizers made by persons residing outside the limits of this state, shall, between the first and twentieth days of July in each year, furnish to the director of the New York State Agricultural Experiment Station at Geneva, a list of the commercial fertilizers they manufacture or offer for sale, for use in this state, with the

names or brands by which they are known on the market, and the several percentages of nitrogen or its equivalent of ammonia, of phosphoric acid, both soluble and available, and of potash, either single or combined, contained in said fertilizers, as called for in the preceding section. Whenever any fertilizer or fertilizing ingredients are shipped or sold in bulk, for use by farmers in this state, a statement must be sent to the director of the New York State Agricultural Experiment Station at Geneva, giving the name of the goods so shipped, accompanied with an affidavit from the seller giving the analysis of such percentage guaranteed.

§ 35. **When statement shall be deemed false; application of sections.**— Whenever a correct chemical analysis of any fertilizer offered for sale in this state shows a deficiency of more than one-third of one per centum of nitrogent or its equivalent of ammonia or one-half of one per centum of available phosphoric acid or one-half of one per centum of potash soluble in distilled water, such statement shall be deemed false.

The provisions of this article relating to fertilizers, shall apply to all fertilizers offered or exposed for sale for use in this state, the selling price of which is ten dollars per ton or higher, and of which they are part or parcel, and of any element into which they enter as fertilizing material, including nitrate of soda, sulphate of ammonia, dissolved bone black and bone black undissolved, any phosphate rock, treated or untreated with sulphuric or other acids, ashes from whatever source obtained, potash salts of all kind, fish scrap, dried or undried, also all combinations of phosphoric acid, nitrogen or potash, from whatever source obtained, as well as every article that is or may be combined for fertilizing purposes.

§ 36. **Inert nitrogenous matter to be stated.**— All manufacturers or dealers exposing or offering for sale in this state fertilizers containing roasted leather or any other form of inert nitrogenous matter shall, in legible print, state the fact upon the package in which the fertilizers are offered or exposed for sale.

§ 37. **Penalties.**— Every person, firm or corporation violating any provisions of this article relating to the manufacture or sale of commercial fertilizers or the furnishing of lists or analysis thereof or statements of their ingredients or component parts, shall forfeit to the people of the state the sum of one hundred dollars for every such violation.

Agents, representatives or sellers of manufactured fertilizers or fertilizing material made or owned by parties outside of this state and offered for sale for use in this state, shall be subject to the provisions of this article relating to commercial fertilizers and to the penalties imposed thereby, and shall in all particulars take the place of their nonresident principals.

§ 38. **Duties of the director of the New York state agricultural experiment station relating to fertilizers.**— The director of the New York State Agricultural Experiment Station at Geneva shall enforce the provisions of this article relating to the manufacture, sale, prohibition of the sale and analysis of commercial fertilizers and prosecute actions in the name of the people for violation thereof, and for that purpose he may employ agents, counsel, chemists and experts. Such director or his duly authorized agents shall have full access, egress and ingress to all places of business, factories, buildings, cars, vessels or other places where any manufactured commercial fertilizer is sold, offered for sale or manufactured; and may open any package, barrel or other thing containing any such fertilizer and take therefrom sufficient samples. Such samples may be divided into different portions and one or more portions sealed in such a way that it can not be opened without an examination, showing to the persons sealing the same that it has been opened, and may be delivered to the person from whom the sample is taken, or any other person that may be agreed on by such director or his agents taking the sample and the person from whom it is taken, and the portions so delivered, may on consent of the parties, be delivered to a chemist other than the chemist employed by such director for analysis.

§ 39. **Sale of agricultural products on commission.**—Any person doing business in this state as a commission merchant, or who receives from any person of this state agricultural products or farm produce raised in this state to sell on commission, shall, immediately on the receipt of such goods, send to the consignor a statement in writing, showing what property has been received. When any such person or commission merchant shall have sold twenty-five per centum of such property received by him, he shall, when requested, immediately render a true statement to the consignor, showing what portion of such consignment has been sold and the price received therefor.

§ 40. Duty of hotel keepers to provide fire-escapes.— Every owner, lessee, proprietor or manager of a hotel, not fire-proof, exceeding two stories in height, shall cause to be placed, a rope or other better appliance, to be used as a fire-escape, in each room of such hotel, used as a lodging-room, above the ground floor, which rope or other appliance shall be securely fastened into one of the joists or timbers next adjoining a frame of a window of such room. Such rope or appliance shall be at all times kept coiled up and exposed to the plain view of any occupant of said room, the coil to be fastened in such a slight manner as to be easily and quickly loosened and uncoiled; and if a rope, it shall be not less than three-fourths of an inch in diameter, and of sufficient length to reach from such window to the ground. Such rope, appliance, iron hook or eye and fastenings shall be of sufficient strength to sustain a weight of four hundred pounds. Such owner, lessee, proprietor or manager must cause to be posted in a conspicuous place in each room and hall of such hotel, above the ground floor, a printed notice to the effect that the rope or appliance is so placed in each such room for use in case of fire, and giving full directions for such use.

It is the duty of the chief engineer or the officer performing the duties of a chief engineer of the fire department of a city or village to inspect, or cause to be inspected by some person deputized by him for that purpose, in the months of January and July of each year, each such room of every hotel in his city or village, and to ascertain if the provisions of this section are complied with, and to make and file a written report with the mayor, president or other officer performing the duties of chief executive of such city or village, on or before the fifteenth day of February and August of each year, showing what hotels he had so inspected, and specifying which of them have fully complied with the provisions of this section, and which, if any, have not, and in what respect and to what extent. An owner, lessee, proprietor, manager or other person who obstructs or prevents such inspection is liable to a penalty of fifty dollars for each such offense. Such mayor, president or other chief executive officer, shall sue for such penalty in the name of his city or village, and shall proceed against any person criminally violating this section

ARTICLE III.

Auctions and Auctioneers.

Section 50. Conduct of auction sales.
51. Commissions; penalty.
52. Power of common council of cities.
53. Bond and appointment of auctioneers in cities.
54. Agents of comptroller.

Section 50. **Conduct of auction sales.**— Goods sold at auction shall, in all cases, be struck off to the highest bidder. When struck off and the contract be not immediately executed by the payment of the price or the delivery of the goods, the auctioneer shall enter in a sale book kept by him for that purpose a memorandum of the sale, specifying the nature, quantity and price of the goods, the terms of sale and the names of the purchaser and of the person on whose account the sale is made.

§ 51. **Commissions; penalty.**— An auctioneer in any county, other than New York or Kings, shall not, without a previous agreement in writing, with the owner or consignee of the goods sold, demand or receive a greater compensation for his services than a commission of two and one-half per centum on the amount of any sale, public or private, made by him. For a violation of this section he shall refund the moneys illegally received and forfeit two hundred and fifty dollars to each person from whom he demands or receives an unlawful compensation or commission.

§ 52. **Power of common council of cities.**— Except as otherwise provided in the charter of the city, the common council of a city may designate such place or places within such city for the sale by auction of horses, carriages and household furniture, as it deems expedient.

§ 53. **Bond and appointment of auctioneers in cities.**— No person, except one whose auction business is confined to the sale of farm property, shall act as auctioneer on the sale at public auction of personal property in any city until he has entered into a bond to the people of the state, with at least two sufficient sureties, in the penalty of five thousand dollars, in a city having a population exceeding fifty thousand, and elsewhere in the penalty of one thousand dollars, conditioned that he will faithfully perform his duties as such auctioneer and render such accounts and pay such duties as he may be required by law.

Such bond must be approved in writing by the agent appointed by the comptroller, pursuant to this article, or if in a city where there is no such agent, by the mayor or recorder thereof; and must be filed with the comptroller of the state, who must thereon deliver to such person a written certificate of appointment, stating the city for which appointed. Such certificate shall be recorded in a book kept by the comptroller for that purpose and a certified copy thereof shall be delivered to such agent, or if there be none, filed in the office of the clerk of the county in which such city is located.

Such undertaking and certificate shall be annually renewed on or before the first Monday of January.

This section does not repeal or supersede the provisions of any local statute or city charter.

§ 54. **Agents of comptroller.**— The comptroller may employ such agent or agents as he deems necessary in any city to see that the provisions of this act are carried into effect. Such agents may take and approve the bonds required by law and shall transmit all bonds taken and approved by them to the comptroller within ten days after the same are approved. The fees of such agents for taking and approving such bonds, shall be five dollars.

ARTICLE IV.

Peddlers.

Section 60. Application for license.
61. Licenses.
62. Penalties.
63. Arrest and conviction of offender.
64. Municipal regulations.
65. License for using dogs before vehicles.

Section 60. **Application for license.**— No person shall travel from place to place, within this state, for the purpose of carrying to sell or exposing for sale, any goods, wares or merchandise of the growth, product or manufacture of any foreign country, other than family groceries and provisions, without a license as a peddler, granted by the secretary of state. A written application shall be made, to be filed with the secretary of state, signed by the applicant or his authorized agent, in which shall be stated

the manner in which the applicant intends to travel and trade, whether on foot or with one or more horses or other beasts of burden, or with any sort of carriage or boat. He shall file with the application, the receipt of the treasurer of the state, showing that he had paid into the state treasury the following duties:

For one years's license and proportionally for any shorter term not less than six months, if he intends to travel on foot the sum of twenty dollars; if with a single horse or other beast carrying a burden, or with a boat, the sum of thirty dollars; and if with any vehicle or carriage drawn by more than one horse or other animal, the sum of fifty dollars.

§ 61. **Licenses.**— The secretary of state shall, on payment of his fees, and on filing the receipt of the treasurer, countersigned by the comptroller, grant a license under his seal of office, signed by himself or his deputy, authorizing the applicant to travel and trade within this state as a peddler, in the manner stated therein, for the term of one year from the date of the license or for any shorter term not less than six months. Every such license shall be renewed on the expiration thereof by the secretary of state on the same terms and conditions that the original license was granted, if the renewal be applied for.

§ 62. **Penalties.**— Every person found traveling and trading within this state contrary to the provisions of this article, or contrary to the terms of any license that may have been granted to him under this article, shall, for each offense, forfeit to the town in which the offense shall be committed the sum of twenty-five dollars, to be applied to the support of the poor of the town. Every person traveling or trading within this state, having a license, who refuses to produce a license as a peddler to any officer or citizen who demands the production of the same shall, for each offense, forfeit to the town in which the demand is made the sum of ten dollars, to be applied to the support of the poor thereof. The refusal of any such person to produce a license when demanded shall be presumptive evidence that he is traveling and trading without a license.

No action for the recovery of any penalty imposed by this article shall be maintained unless it be brought within sixty days after the commission of the offense charged.

§ 63. **Arrest and conviction of offender.**—The overseers of the poor shall see that the provisions of this article are enforced in

their respective towns. Any citizen may arrest any person trading as a peddler who neglects or refuses to produce his license on demand, and shall immediately convey such person before some justice of the peace of the county. If the fact that the person so arrested has traded without a license be proved to the satisfaction of the justice, he shall convict such person of an offense against this article and on such conviction shall issue his warrant to some constable of the county, commanding such constable to levy and collect from the personal property of the offender the sum of twenty-five dollars, with the costs of the proceeding, not exceeding five dollars. The penalty collected on such warrant shall be paid by the justice to the overseer of the poor of the town where the offense was committed.

If it appears in said proceeding that the person arrested refused to produce his license or to disclose his name when lawfully required, no costs shall be allowed such defendant, nor shall he maintain an action for false imprisonment.

§ 64. **Municipal regulations.**— This article shall not affect the application of any ordinance, by-law or regulations of a municipal corporation relating to hawkers and peddlers within the limits of such corporation, but the provisions of this article are to be complied with in addition to the requirements of any such ordinance, by-law or regulation.

§ 65. **License for using dogs before vehicles.**—Any person who shall use a dog for drawing or helping to draw any vehicle in any city or incorporated village, for peddling or any other business purpose, shall take out a license for that purpose from the mayor of the city or president of the village, and shall have the number of the license and the residence of the owner distinctly painted on such vehicle.

A person violating this section shall forfeit to the city or village where the violation occurs one dollar for the first offense and ten dollars for each subsequent offense.

ARTICLE V.

Flour and Meal.

Section 70. How packed.
71. Size of casks.
72. How casks shall be marked and branded.
73. Casks of wheat flour, how branded.

Section 74. Casks of rye flour, how branded.
75. Casks of meal, how branded.
76. Prohibition against wrong marking.
77. Counterfeiting marks prohibited.
78. Prohibition against sale of mixed flour.
79. Prohibition against transportation of Indian meal on deck.

Section 70. **How packed.**— All wheat flour, rye flour, Indian meal or buckwheat meal manufactured in this state for exportation shall be packed in good strong casks made of seasoned oak or other sufficient timber, and hooped with at least ten hoops, three of which shall be on each chime, and properly nailed.

§ 71. **Size of casks.**— The casks shall be of two sizes only. One size shall contain one hundred and ninety-six pounds of flour or meal, with staves twenty-seven inches long and each head sixteen and one-half inches in diameter; and the other size shall contain ninety-eight pounds, with staves twenty-two inches long and each head fourteen inches in diameter, or with staves twenty-seven inches long and each head not more than twelve inches in diameter. But Indian meal may likewise be packed in hogsheads which shall contain eight hundred pounds.

§ 72. **How casks shall be marked and branded.**— The casks shall be made as nearly straight as may be, and their tare shall be marked on the head with a marking iron; they shall be branded with the weight of the flour and meal contained therein, and branded or painted with the initial letter of the Christian name and the surname at full length of the manufacturer thereof; except hogsheads of Indian meal, on which the weight only shall be branded.

§ 73. **Casks of wheat flour, how branded.**— Every such cask of wheat flour shall also be branded as follows: If of a very superior quality "extra superfine;" if of a quality now branded "superfine" with the word "superfine;" if of a third quality, "fine;" if of a fourth quality, "fine middlings;" if of a fifth quality, "middlings;" if of a sixth quality, "ship stuffs."

§ 74. **Casks of rye flour, how branded.**— Each cask of rye flour intended for the first quality shall be branded with the words "superfine rye flour," and each cask intended for the second quality, with the words "fine rye flour."

§ 75. **Casks of meal, how branded.**— Each cask of Indian meal shall be branded with the words "Indian meal;" and each cask of buckwheat meal, with the letter and the word "B meal."

§ 76. **Prohibition against wrong marking.**— A person shall not knowingly offer for sale any cask of flour or meal upon which the tare is undermarked, or in which there is a less quantity of meal than is branded thereupon. A manufacturer of flour or meal shall not undermark the tare of any cask, or put therein a less quantity of meal than is branded thereupon; but if the light weight of any such cask has been occasioned by some accident unknown to the manufacturer, and which happened after the packing of the cask, it shall not be deemed a violation of this section.

A person violating any provision of this section shall forfeit to the people of the state the sum of five dollars for every such violation.

§ 77. **Counterfeiting marks prohibited.**— No person shall alter or counterfeit any brand marks, whether state or private, made under the provisions of this article, or put any flour or meal in any empty cask previously used and branded, and offer the same for sale in such cask without first cutting out the brands.

A person violating the provisions of this section in regard to altering or counterfeiting any brand marks shall forfeit to the people of the state the sum of one hundred dollars for each such violation, and a person violating any other provision of this section shall forfeit to the people of the state the sum of five dollars for each such violation.

§ 78. **Prohibition against the sale of mixed flour.**— No person shall knowingly offer for sale as good wheat flour, any flour which contains a mixture of Indian meal, or any other mixtures, or any unsound flour. A person violating this section shall forfeit to the people of the state the sum of five dollars for each such violation.

§ 79. **Prohibition against the transportation of Indian meal on deck.**— No person having charge of any vessel shall transport, into the city of New York, any Indian meal upon the deck of any vessel.

Every person violating this section shall forfeit to the people of the state twenty cents for every barrel and eighty cents for every hogshead transported in violation of any provision of this section.

ARTICLE VI.

Beef and Pork.

Section 90. Barrels and tierces, how made.
91. Barrels in Suffolk, Kings and Queens counties.
92. Qualities of pork.

Section 90. **Barrels and tierces, how made.**— All barrels in which any pork or beef is repacked, shall be of good, seasoned white oak or white ash staves and heading, free from every defect; and each barrel shall contain two hundred pounds of beef or pork.

The barrel shall measure seventeen and one-half inches between the chimes, and be twenty-eight inches long, and hooped with twelve good, hickory, white oak or other substantial hoops. If made of ash staves, it shall be hooped with at least fourteen hoops. The staves and heads shall be of good thick stuff, the heads not less than three-quarters of an inch thick; and each stave, on each edge, at the bilge, shall not be less than one-half an inch thick, when finished. The hoops shall be well set and drove, and the barrels branded on the bilge with at least the initial letters of the cooper's name. The half barrel shall contain not less than fifteen, nor more than sixteen gallons, and be made in proportion to and of like materials as a whole barrel, and shall contain one-half the quantity of beef or pork of the whole barrel.

The tierce shall be made in proportion to and of like materials as a barrel, and shall contain three hundred pounds of beef or pork.

§ 91. **Barrels in Suffolk, Kings and Queens counties.**— All beef and pork which is repacked in and exported from the counties of Suffolk, Kings and Queens, may be packed in barrels as nearly as straight as may be, made of good, seasoned red oak staves and heading of the growth of such counties respectively, free from sap and every defect and made otherwise as above directed.

§ 92. **Qualities of Pork.**— Each barrel of pork shall be branded on one of its heads by its name, and contain either "mess pork," "prime pork," or "cargo pork." "Mess pork" consists of the sides of good, fat hogs, exclusive of all other pieces. "Prime pork" is pork of which there is in a barrel not more than three

shoulders, the legs being cut off at the knee joint, not more than twenty-four pounds of heads which have the ears and snouts cut off, the snouts cut off to the opening of the jaws, and the brains and bloody grizzle taken out of the heads; and the rest made up of side pieces, neck and tail pieces. "Cargo pork" is pork of which there is not in a barrel more than thirty pounds of head and four shoulders, and it shall be otherwise merchantable pork. "Side pork" so repacked, shall be cut from the back bone to the belly, in pieces about five inches wide, and which in weight are not under four pounds; otherwise, the barrels containing the same shall not be branded merchantable pork.

ARTICLE VII.

Hops and Hay.

Section 100. Bales of hops to be marked.
101. Adulteration of hops prohibited; counterfeiting marks.
102. Standard weight of hop bales and tare thereon.
103. Bales of hay to be marked.
104. Prohibition against the adulteration of hay.
105. Weight to be marked on bale.

Section 100. **Bales of hops to be marked.**— Every person putting up hops for sale or exportation shall mark or stamp on each bale or other package containing the same, in a legible manner, the initial letter of his Christian name, and his surname at full length, and the gross weight of such bale or package, before its removal from the place where the hops are put up.

A person violating this section shall forfeit to the people of the state the sum of five dollars for each such violation.

§ 101. **Adulteration of hops prohibited; counterfeiting marks.** — No person shall intermix with any hops any foreign or improper substance, or in any manner adulterate their quality.

No person shall counterfeit the marks on any bale or package of hops, or empty any bale or package of hops so marked, for the purpose of putting therein other hops for sale or exportation, without first erasing such marks.

A person violating any provision of this section shall forfeit to the people of the state the sum of one hundred dollars for each such violation.

§ 102. **Standard weight of hop bales and tare thereon.**— A bale of hops sold in this state shall not weigh less than one hundred and seventy-five nor more than two hundred and ten pounds. The tare to be deducted is five pounds. The standard weight of sacking for baling is not less than twenty-four nor more than thirty ounces for each yard; five yards thereof is the maximum quantity to be used for each bale, and any excess in the weight of such sacking or other extraneous matter used in baling may be deducted as additional tare.

§ 103. **Bales of hay to be marked.**— Every person who puts up and presses any bundle of hay for market shall mark or brand, in a legible manner, the initials of his name or the initial letter of his Christian name, and his surname at full length, and the name of the town in which he resides, on some board or wood attached to such bundle of hay. Such hay may be sold with or without deduction for tare, and by the weight as marked, or any other standard weight as agreed between seller and buyer.

A person violating this section shall forfeit to the people of the state the sum of five dollars for each such violation.

§ 104. **Prohibition against the adulteration of hay.**—No person shall put or conceal in any such bundle of hay any wet or damaged hay, or other materials, or hay of any inferior quality to that which plainly appears upon the outside of such bundle.

A person violating this section shall forfeit to the people of the state the sum of five dollars for each such violation.

§ 105. **Weight to be marked on bale.**— The gross weight shall be plainly marked on each bale of hay or straw sold or offered for sale in this state; and no baled hay or straw shall be so sold or offered for sale which weighs less than such gross weight after deducting five pounds from such bale for shrinkage. And no baled hay or straw shall be so sold or offered for sale with more than twenty pounds of wood to the bale, the weight of which is two hundred pounds or upward, or more than ten pounds of wood for bales weighing less than two hundred pounds.

A person violating any provision of this section shall forfeit to the people of the state the sum of five dollars for each such violation.

ARTICLE VIII.

Laws Repealed; When to Take Effect.

Section 110. Laws repealed.
111. When to take effect.

Section 110. Laws repealed.— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 111. When to take effect.— This chapter shall take effect on the first day of October, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

LAWS OF—	Chapter.	Sections.
Revised Statutes, part I, chapter 17		All.
1829	297	All.
1831	315	All.
1833	261	All.
1835	62	All.
1835	238	All.
1835	282	All.
1836	475	All.
1838	52	All.
1840	70	All.
1843	86	All.
1843	202	All.
1846	62	All.
1849	372	All.
1849	399	All.
1850	307	All.
1851	134	All, except § 33.
1854	326	All.
1857	560	All.
1859	72	All.
1860	155	All.
1862	178	All.
1863	77	All.
1864	131	All.
1864	276	All.
1865	295	All.
1865	666	All.
1865	773	All.
1866	872	All.
1867	375	6.
1868	106	All.
1875	175	All.
1875	573	All.

L. 1896, ch. 377.	Ch. 44, G. L.	
LAWS OF—	Chapter.	Sections.
1878	287	All.
1879	324	All.
1880	72	All.
1880	386	All.
1882	292	All.
1883	310	All.
1884	94	All.
1885	269	All.
1886	417	All.
1887	337	All.
1887	377	All.
1887	401	All.
1887	720	All.
1888	181	All.
1888	581	All.
1889	239	All.
1890	25	All.
1890	437	All.
1892	656	All.
1894	601	All.

THE BENEVOLENT ORDERS LAW,

As amended to the commencement of the session of 1897.

L. 1896, ch. 377 — An act in relation to benevolent orders, constituting chapter forty-four of the general laws.

[Became a law April 23, 1896, taking effect October 1, 1896.]

CHAPTER XLIV OF THE GENERAL LAWS.

The Benevolent Orders Law.

Section 1. Short title.
2. Organization.
3. Powers.
4. Terms of trustees.
5. Powers of trustees.
6. Reorganization.
7. Joint corporations.

Section 8. Trustees.
9. Powers.
10. Mortgaging property.
11. Laws repealed.
12. When to take effect.

Section 1. **Short title.**— This chapter shall be known as the benevolent orders law.

§ 2. **Organization.**— Either of the following orders.

1. A lodge of Free and Accepted Masons duly chartered by and installed according to the general rules and regulations of the Grand Lodge of Free and Accepted Masons of the state of New York;

2. A chapter of Royal Arch Masons duly chartered by and installed according to the general rules and regulations of the Grand Chapter of Royal Arch Masons of the state of New York;

3. A council of Royal and Select Masons duly chartered by and installed according to the general rules and regulations of the Grand Council of Royal and Select Masters of the state of New York;

4. A Commandery of Knights Templar duly chartered by and instituted according to the general rules and regulations of the Grand Commandery of the state of New York;

5. A consistory, chapter, council or lodge duly chartered by and instituted according to the general rules and regulations of the Supreme Council of the Ancient and Accepted Scottish Rite for the Northern Jurisdiction of the United States;

6. A lodge of Odd Fellows, duly chartered by and installed according to the general rules and regulations of the Grand Lodge of the Independent Order of Odd Fellows of the state of New York;

7. A temple of Nobles of the Mystic Shrine duly chartered by and instituted according to the general rules and regulations of the Imperial Council of the Ancient Arabic Order of the Nobles of the Mystic Shrine for the United States of America;

8. A lodge of the Knights of Pythias, duly chartered by and installed according to the general rules and regulations of the Grand Lodge of the Knights of Pythias of the state of New York;

9. A post of the Grand Army of the Republic, chartered and installed according to the regulations of that organization:

May elect at any regular communication, convocation, encampment or other regular meeting thereof, by whatever name known, held in accordance with the constitution and general rules and regulations of such grand lodge, chapter, commandery or council, or other governing body to which it belongs, or with which it is connected, and in conformity to its own by-laws, if it has any, three trustees for such lodge, chapter, commandery, consistory, council, temple or post who shall be members thereof in full membership and in good and regular standing therein; and may file in the office of the secretary of state, a certificate of such election, signed and acknowledged by the first three elective officers of such lodge, chapter, commandery, consistory, council, temple or post, stating the time and place of such election and that the same was regular, the names of such trustees, and the term severally for which they are elected to serve, and the name of the lodge, chapter, commandery, consistory, council, temple or post for which they are elected.

§ 3. **Powers.**— Such trustees may take, hold and convey by and under the direction of such lodge, chapter, commandery, consistory, council, temple or post, all the temporalities and property belonging thereto, whether real or personal, and whether given, granted or devised directly to it or to any person or persons for it or in trust for its use and benefit, and may sue for and recover, hold and enjoy all the debts, demands, rights and privileges, and all buildings and places of assemblage, with the appurtenances, and all other estate and property belonging to it in whatsoever manner the same may have been acquired, or in whose name soever the same may be held, as fully as if the right and title thereto had been originally vested in them; and may purchase and hold for the purposes of the lodge chapter, commandery, consistory, council, temple or post other real and personal property, and demise, lease and improve the same. Every such lodge, chapter, commandery, consistory, council, temple or post may make rules and regulations, not inconsistent with the laws of this state, or with the constitution or general rules or laws of the grand lodge or other governing body to which it is subordinate, for managing the temporal affairs thereof, and for the disposition of its property and other temporal concerns and revenue belonging to it, and the secretary and treasurer thereof, duly elected and installed according to its constitution and general regulations

and laws, shall, for the time being, be ex officio its secretary and treasurer. No board of trustees for any lodge, chapter, commandery, consistory, council, temple or post filing the certificate aforesaid, shall be deemed to be dissolved for any neglect or omission to elect a trustee annually or fill any vacancy or vacancies that may occur or exist at any time in said board, but it shall and may be lawful for said lodge, chapter, commandery, consistory, council, temple or post to fill such vacancy or vacancies at any regular communication thereafter to be held, and till a vacancy arising from the expiration of the term of office of a trustee is filled as aforesaid, he shall continue to hold the said office and perform the duties thereof.

§ 4. **Terms of trustees.**— The persons first elected trustees of such lodge, chapter, commandery, consistory, council, temple or post, if a lodge of Free and Accepted Masons, or a chapter of Royal Arch Masons, shall be divided by lot by the officer, making the certificate of election, so that the term of one shall expire on the day of the festival of Saint John the Evangelist, next thereafter, and another in one year, and the third in two years thereafter. If other than a lodge or chapter of Free and Accepted Masons, the trustees first elected shall be divided by lot by the officers making the certificate of election, so that the term of one will expire in one year, one in two years, and one in three years thereafter. One trustee shall annually thereafter be elected by such lodge, chapter, commandery, consistory, council, temple or post, by ballot, in the same manner and at the same time as the first three officers thereof severally are or shall be elected according to its constitution, by-laws and regulations; and a certificate of such election under the hands of such officers and the seal of the lodge, chapter, commandery, consistory, council, temple or post, if it has any, shall be made, and shall be evidence of such election and entitle the person so elected to act as trustee. If any trustee dies, resigns, demits, is suspended or expelled, removes from the state, or becomes incapacitated for performing the duties of his office, his office shall be deemed vacant. Such lodge, chapter, commandery, consistory, council, temple or post may, at any regular communication, convocation, encampment or other regular meeting, by whatever name known, fill any vacancy in the office of trustee, by ballot, which election shall be certified in like manner and with like effect as an annual election, and the person so elected shall hold his office

during the unexpired term of the trustee, whose place he was elected to fill.

§ 5. **Powers of trustees.**— Such trustees shall have the care, management and control of all the temporalities and property of the lodge, chapter, commandery, consistory, council, temple or post, and they shall not sell, convey or dispose of any property except by and under its direction, duly had or given at a regular or stated communication, convocation, encampment or meeting thereof, according to its constitution and general regulations. They shall at all times obey and abide by the directions, orders and resolutions of such lodge, chapter, commandery, consistory, council, temple or post duly passed at any regular or stated communication, convocation, encampment or meeting thereof not in conflict with the constitution and laws of this state or of the grand body to which it shall be subordinate, or of such lodge, chapter, commandery, consistory, council, temple or post. If a lodge of Free and Accepted Masons, or a chapter of Royal Arch Masons, surrender its warrant to the grand body to which it is subordinate or is expelled or becomes extinct, according to the general rules or regulations of such body, the trustees then in office shall, out of the property belonging to such lodge or chapter, satisfy all just debts due from it and transfer the residue of its property to the "trustees of the Masonic hall and asylum fund," a corporation created by chapter two hundred and seventy-two of the laws of eighteen hundred and sixty-four, entitled "An act to incorporate the trustees of the Masonic hall and asylum fund," and unless reclaimed by such lodge or chapter within three years from such transfer, in accordance with the constitution and general regulations of such grand body, the same, with the avails or increase thereof, shall be applied by the "trustees of the Masonic hall and asylum fund" to the benevolent purposes for which such trustees were created in and by such act.

§ 6. **Reorganization.**— Any such lodge, chapter, commandery, consistory, council, temple or post heretofore incorporated by the laws of this state, or thereby heretofore enabled to take and hold real or personal property, or both, may surrender its act of incorporation, charter or privilege so conferred upon it, and may become enable to take and hold real or personal property, or both, under the provisions of this chapter, on making and filing a certificate in the manner specified in this chapter, and stating

therein, in addition to what is required in such a certificate, the surrender of such act of incorporation, charter or privilege, specifying the same. The property theretofore held and possessed by it shall be fully vested in its trustees, who shall have all the rights, powers and privileges, and be subject to all the provisions of this chapter.

§ 7. Joint corporations.—Any member of masonic bodies within the state, chartered by the Grand Lodge of Free and Accepted Masons of the State of New York, the Grand Chapter of Royal Arch Masons of the State of New York, the Grand Council of Royal and Select Masters of the State of New York, the Grand Commandery of Knights Templar of the State of New York, the Supreme Council of the Ancient and Accepted Scottish Rite for the Northern Masonic Jurisdiction, United States of America, or the Imperial Council of the Ancient Arabic Order of Nobles of the Mystic Shrine, United States of America; any lodges, encampments and cantons within the State chartered by the Grand Lodge of the Independent Order of Odd Fellows, the Grand Encampment of the Independent Order of Odd Fellows, or by the Sovereign Grand Lodge of the Independent Order of Odd Fellows; any lodges or other bodies of the Knights of Pythias, duly chartered by and installed according to the general rules and regulations of the Grand Lodge of Knights of Pythias of the state of New York, any posts of the Grand Army of the Republic, chartered and installed according to the regulations of that organization, any lodges or other bodies of the Deutcher Orden der Harugari, duly chartered and installed according to the general rules and regulations of the Grand Lodge of the Deutcher Orden der Harugari of the state of New York, or of the Sovereign Grand Lodge of the Deutcher Orden der Harugari of the United States, and any number of trades unions, trades assemblies, trades associations or labor organizations, may unite in forming a corporation for the purpose of acquiring, constructing, maintaining and managing a hall, temple or other building and creating, collecting, and maintaining a library for the use of the bodies uniting to form such corporation. Each body uniting to form such corporation shall, at a regular meeting thereof, held in accordance with its constitution and general rules and regulations or by-laws, elect a member thereof to be a trustee of such corporation, and shall make and file in the office of the clerk of the county where such

building is to be located a certificate of such election signed and acknowledged by the highest two officers thereof, stating the time and place of the election, its regularity, the name of the trustee, and the name of the body from which he was elected. The trustees so elected shall make, acknowledge and file a certificate stating the name of the corporation to be formed, its purposes and objects, the names and places of residence of the trustees, the names of the bodies which they respectively represent, and the name of the town, village or city where such building is to be located; and thereon such trustees and their successors shall be a corporation for the purposes specified in such certificate.

§ 8. Trustees.— The persons executing such certificate and named therein shall be the board of trustees of such corporation. If but two bodies united to form such corporation, its by-laws may prescribe the terms of office of the trustees. If more than two bodies so unite the trustees shall divide themselves by lot into three classes, so that the term of office of the first class shall expire in one year; the term of office of the second class, in two years; and the term of office of the third class in three years. On a vacancy occurring in the office of a trustee of such corporation, the body which he represented shall fill such vacancy, and the person so chosen shall hold office for three years, if chosen on the expiration of the term of his predecessor, and otherwise, until the expiration of the original term. The board of trustees may admit as members of such corporation and of such board of trustees the representatives of bodies chartered or instituted by the same general governing body as any of the bodies named in such certificate, or by any superior or higher jurisdiction or governing body of the order to which any such bodies belong, and shall file in the county clerk's office a certificate showing such action. The board of trustees shall fix the term of office of the representatives so admitted at one, two or three years, and shall so apportion such new representatives that as nearly as possible the terms of office of one-third of the directors of such corporation, shall expire annually.

§ 9. Powers.— Such corporation may acquire real property in the town, village or city in which such hall, temple or building is or is to be located, and erect such building or buildings thereupon for the uses and purposes of the corporation, as the

trustees may deem necessary, or repair, rebuild or reconstruct any building or buildings that may be thereupon and furnish and complete such rooms therein as may appear necessary for the use of such bodies or for any other purpose for which the corporation is formed; and may rent to other persons any room in such building or any portion of such real property. Until such real property shall be acquired or such building erected or made ready for use, the corporation may rent and release such rooms or apartments in such town, village or city as may be suitable or convenient for the use of the bodies mentioned in such certificate, or of such other bodies as may desire to use them, and the board of trustees may determine the terms and conditions on which rooms and apartments in such building or buildings, when erected, or which may be leased, shall be used and occupied. Before such corporation shall purchase or sell any real property, or erect or repair any building or buildings thereupon, and before it shall purchase any building or part of a building for the use of a corporation, it shall submit to the bodies constituting the corporation, the proposition to make such sale or purchase, or to erect or repair any such building or buildings, or to rent any building or part thereof, for the use of the corporation; and unless such proposition receives the approval of two-thirds of the bodies constituting the corporation, such proposition shall not be carried into effect. The evidence of the approval of such proposition by any such body shall be a certificate to that effect signed by the presiding officer and secretary of the body, or the officers discharging duties corresponding to those of a presiding officer and secretary, under the seal of such body. But where land is purchased for the purpose of erecting a hall or temple thereupon the buildings upon such land at the time of such purchase, may be sold by the trustees without such consent.

§ 10. **Mortgaging property.**— If the funds of the corporation shall not be sufficient to pay for any real property purchased by the board of trustees in pursuance of law, or for the construction, repair or rebuilding of a suitable building or buildings, and the finishing or furnishing of apartments therefor, the corporation may issue its bonds bearing interest, semi-annually, for such additional sum as may be required therefor, and may execute to

any such trustee or trustees, as the board may select, a mortgage upon its real property as security for the payment of such bonds. The proceeds of such bonds shall be applied to the payment of debts of the corporation incurred by the purchase of such real property, or the construction and repair of a building or buildings thereupon or the finishing or furnishing of apartments therein. Any of the bodies specified in section seven may invest its funds in the bonds authorized by this section to be issued.

§ 11. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed that portion specified in the last column is repealed.

§ 12. **When to take effect.**— This chapter shall take effect on October first, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

LAWS OF—	Chapter.	Sections.
1866	317	All.
1869	176	All.
1871	308	All.
1873	417	All.
1885	419	All.
1888	290	All.
1892	290	All.
1893	72	All.
1895	713	All.

THE REAL PROPERTY LAW,

As amended to the commencement of the session of 1897.

L. 1896, ch. 547 — An act relating to real property, constituting chapter forty-six of the general laws.

[Became a law May 12, 1896, taking effect October 1, 1896.]

CHAPTER XLVI OF THE GENERAL LAWS.

The Real Property Law.

Article 1. Tenure of real property. (§§ 1-9.)
2. Creation and division of estates. (§§ 20-56.)
3. Uses and trusts. (§§ 70-93.)
4. Powers. (§§ 110-163.)
5. Dower. (§§ 170-187.)
6. Landlord and tenant. (§§ 190-202.)
7. Conveyances and mortgages. (§§ 205-234.)
8. Recording instruments affecting real property. (§§ 240-277.)
9. Descent of real property. (§§ 280-296.)
10. Laws repealed; when to take effect. (§§ 300-301.)

ARTICLE I.

Tenure of Real Property.

Section 1. Short title; definitions; effect.
2. Capacity to hold real property.
3. Capacity to transfer real property.
4. Deposition of resident alien.
5. When and how alien may acquire and transfer real property.
6. Effect of marriage with alien.
7. Title through alien.
8. Liabilities of alien holders of real property.
9. Heirs of patriotic Indian.

Section 1. **Short title; definitions; effect.** — This chapter shall be known as the real property law. The terms "real prop-

erty" and "lands" as used in this chapter are coextensive in meaning with lands, tenements and hereditaments. This chapter does not alter or impair any vested estate, interest or right, nor alter or affect the construction of any conveyance, will or other instrument which has taken effect at any time before this chapter becomes a law.

§ 2. **Capacity to hold real property.**—A citizen of the United States is capable of holding real property within this state, and of taking the same by descent, devise or purchase.

§ 3. **Capacity to transfer real property.**—A person other than a minor, an idiot, or person of unsound mind, seized of or entitled to an estate or interest in real property, may transfer such estate or interest.

§ 4. **Deposition of resident alien.**—An alien who, pursuant to the laws of the United States, has declared his intention of becoming a citizen, and who is, and intends to remain, a resident thereof, may make a written deposition to such facts, before any officer authorized to take the acknowledgment or proof of deeds to entitle them to be recorded within the state. Such deposition must be certified by the officer before whom it is made, and may be filed in the office of the secretary of state, and when so filed, must be recorded by him in a book kept for that purpose. Such deposition shall be presumptive evidence of the facts therein contained.

§ 5. **When and how alien may acquire and transfer real property.**—An alien may, for a term of six years after filing the deposition described in the last preceding section, take, hold, convey and devise real property. If such deposition be filed, or such alien be admitted to citizenship, a grant, devise, contract or mortgage theretofore made to or by him is as valid and effectual as if made thereafter; provided, however, that a devise to an alien shall not be valid unless a deposition be filed by him, or he be admitted to citizenship, within one year after the death of the testator, or if the devisee is a minor, within one year after his majority. If a person who has filed such a deposition dies within six years thereafter, and before he is admitted to citizenship, his widow is entitled to dower in his real property, and if he dies intestate, his heirs or the persons who would otherwise answer to the description of heirs, inherit his

real property, upon such persons being admitted to citizenship, or filing a deposition in their own behalf, within one year after such death, or if minors, within one year after their majority. If an action or proceeding is commenced by the state to recover real property held by an alien, such action or proceeding shall be suspended upon the filing of such deposition, and the service of a certified copy thereof upon the attorney-general, and the payment of the costs to the time of such service.

§ 6. **Effect of marriage with alien.**—A woman who, being a citizen of the United States, marries an alien not entitled to hold real property in this state, may, notwithstanding such marriage, take by grant, will or descent, and hold, convey and devise real property within this state; and the descendants of such a woman who dies intestate, inherit her real property within this state, and any real property which she would have been entitled to take, by descent, if living; and such descendants may take real property by grant or devise from their mother, or from any citizen to whom she would be an heir, may hold real property acquired under this section, and may convey and devise it to any person capable of holding the same.

§ 7. **Title through alien.**— The right, title or interest in or to real property in this state of any person entitled to hold the same can not be questioned or impeached by reason of the alienage of any person through whom such title may have been derived. Nothing in this section affects or impairs the right of any heir, devisee, mortgagee, or creditor by judgment or otherwise.

§ 8. **Liabilities of alien holders of real property.**— Every alien holding real property in this state is subject to duties, assessments, taxes and burdens as if he were a citizen of the state.

§ 9. **Heirs of patriotic Indian.**— The heirs of an Indian to whom real property was granted for military services rendered during the war of the revolution may take and hold such real property by descent as if they were citizens of the state at the time of the death of their ancestors. A conveyance of such real property to a citizen of this state, executed by such Indian or his heirs after March seventh, eighteen hundred and nine, is valid, if executed with the approval of the surveyor-general or state engineer and surveyor, indorsed thereupon.

ARTICLE II.

Creation and Division of Estates.

Section 20. Enumeration of estates.
21. Estate in fee simple and fee simple absolute.
22. Estates tail abolished; remainders thereon.
23. Freeholds; chattels real; chattel interests.
24. When estate for life of third person is freehold; when chattel real.
25. Estates in possession and expectancy.
26. Enumeration of estates in expectancy.
27. Definition of future estates.
28. Definition of remainder.
29. Definition of reversion.
30. When future estates are vested; when contingent.
31. Power of appointment not to prevent vesting.
32. Suspension of power of alienation.
33. Limitation of successive estates for life.
34. Remainders on estates for life of third person.
35. When remainder to take effect if estate be for lives of more than two persons.
36. Contingent remainder on term of years.
37. Estate for life as remainder on term of years.
38. Meaning of heirs and issue in certain remainders.
39. Limitations of chattels real.
40. Creation of future and contingent estates.
41. Future estates in the alternative.
42. Future estates valid though contingency improbable.
43. Conditional limitations.
44. When heirs of life tenants take as purchasers.
45. When remainder not limited on contingency defeating precedent estate takes effect.
46. Posthumous children.
47. When expectant estates are defeated.
48. Effect on valid remainders of determination of precedent estate before contingency.
49. Qualities of expectant estates.
50. Disposition of rents and profits.
51. Accumulations.

Section 52. Anticipation of directed accumulation.
53. Undisposed of profits.
54. When expectant estates are deemed created.
55. Estates in severalty, joint tenancy and in common.
56. When estate in common; when in joint tenancy.

Section 20. **Enumeration of estates.**— Estates in real property are divided into estates of inheritance, estates for life, estates for years, estates at will, and by sufferance.

§ 21. **Estates in fee simple and fee simple absolute.**—An estate of inheritance continues to be termed a fee simple, or fee, and, when not defeasible or conditional, a fee simple absolute, or an absolute fee.

§ 22. **Estates tail abolished; remainders thereon.**— Estates tail have been abolished; and every estate which would be adjudged a fee tail, according to the law of this state, as it existed before the twelfth day of July, seventeen hundred and eighty-two, shall be deemed a fee simple; and if no valid remainder be limited thereon, a fee simple absolute. Where a remainder in fee shall be limited on any estate which would be a fee tail, according to the law of this state, as it existed previous to such date, such remainder shall be valid, as a contingent limitation on a fee, and shall vest in possession on the death of the first taker, without issue living at the time of such death

§ 23. **Freeholds; chattels real; chattel interests.**— Estates of inheritance and for life, shall continue to be termed estates of freehold; estates for years are chattels real; and estates at will or by sufferance, continue to be chattel interests, but not liable as such to sale on execution.

§ 24. **When estate for life of third person is freehold, when chattel real.**—An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee; after his death it shall be deemed a chattel real.

§ 25. **Estates in possession and expectancy.**— Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy. An estate which entitles the owner to immediate possession of the property, is an estate in possession. An estate, in which the right of possession is postponed to a future time, is an estate in expectancy.

§ 26. **Enumeration of estates in expectancy.**—All expectant estates, except such as are enumerated and defined in this article, have been abolished. Estates in expectancy are divided into,

1. Future estates; and

2. Reversions.

§ 27. **Definition of future estates.**—A future estate, is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time.

§ 28. **Definition, remainder.**—Where a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

§ 29. **Definition, reversion.**— A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised.

§ 30. **When future estates are vested; when contingent.**—A future estate is either vested or contingent. It is vested, when there is a person in being, who would have an immediate right to the possession of the property, on the determination of all the intermediate or precedent estates. It is contingent while the person to whom or the event on which it is limited to take effect remains uncertain.

§ 31. **Power of appointment not to prevent vesting.**— The existence of an unexecuted power of appointment does not prevent the vesting of a future estate, limited in default of the execution of the power.

§ 32. **Suspension of power of alienation.**— The absolute power of alienation is suspended, when there are no persons in being by whom an absolute fee in possession can be conveyed. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation, by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate; except that a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, die under the age of twenty-one years, or on any other contingency by which the estate of such persons may be determined before they attain

full age. For the purposes of this section a minority is deemed a part of a life and not an absolute term equal to the possible duration of such minority.

§ 33. **Limitation of successive estates for life.**— Successive estates for life shall not be limited, except to persons in being at the creation thereof; and where a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto, shall be void, and on the death of those persons, the remainder shall take effect, in the same manner as if no other life estates had been created.

§ 34. **Remainders on estates for life of third person.**—A remainder shall not be created on an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder be in fee; nor shall a remainder be created on such an estate in a term of years, unless it be for the whole residue of such term.

§ 35. **When remainders to take effect if estate be for lives of more than two persons.**— When a remainder is created on any such life estate, and more than two persons are named as the persons during whose lives the life estate shall continue, the remainder shall take effect on the death of the two persons first named, as if no other lives had been introduced.

§ 36. **Contingent remainder on term of years.**—A contingent remainder shall not be created on a term of years, unless the nature of the contingency on which it is limited be such that the remainder must vest in interest, during the continuance of not more than two lives in being at the creation of such remainder, or on the termination thereof.

§ 37. **Estate for life as remainder on term of years.**— No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

§ 38. **Meaning of heirs and issue in certain remainders.**— Where a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue," shall be construed to mean heirs or issue, living at the death of the person named as ancestor.

§ 39. **Limitations of chattels real.**—All the provisions contained in this article, relative to future estates, apply to limita-

tions of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

§ 40. **Creation of future and contingent estates.**— Subject to the provisions of this article, a freehold estate as well as a chattel real may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created expectant on the determination of a term of years; and a fee or other less estate, may be limited on a fee, on a contingency which, if it should occur, must happen within the period prescribed in this article.

§ 41. **Future estates in the alternative.**— Two or more future estates may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

§ 42. **Future estate valid though contingency improbable.**—A future estate, otherwise valid, shall not be void on the ground of the improbability of the contingency on which it is limited to take effect.

§ 43. **Conditional limitations.**—A remainder may be limited on a contingency, which, if it happens, will operate to abridge or determine the precedent estate; and every such remainder shall be a conditional limitation.

§ 44. **When heirs of life tenant take as purchasers.**—Where a remainder shall be limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises is given, the persons who, on the termination of the life estate, are the heirs, or heirs of the body, of such tenant for life, shall take as purchasers, by virtue of the remainder so limited to them.

§ 45. **When remainder not limited on contingency defeating precedent estate, takes effect.**—When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it shall be construed as intended to take effect, only on the death of the first taker, or the expiration by lapse of time of such term of years.

§ 46. **Posthumous children.**—Where a future estate is limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of

their parents; and a future estate, dependent on the contingency of the death of any person without heirs, or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

§ 47. **When expectant estates are defeated.**—An expectant estate can not be defeated or barred by any transfer or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate by disseizin, forfeiture, surrender, merger or otherwise; but an expectant estate may be defeated in any manner, or by any act or means which the party creating such estate, in the creation thereof, has provided for or authorized. An expectant estate thus liable to be defeated shall not, on that ground, be adjudged void in its creation.

§ 48. **Effect on valid remainders of determination of precedent estate before contingency.**—A remainder valid in its creation shall not be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder was limited to take effect; should such contingency afterwards happen the remainder shall take effect in the same manner and to the same extent as if the precedent estate had continued to the same period.

§ 49. **Qualities of expectant estates.**— An expectant estate is descendible, devisable and alienable, in the same manner as an estate in possession.

§ 50. **Disposition of rents and profits.**—A disposition of the rents and profits of real property to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this article, for future estates in real property.

§ 51. **Accumulations.**—All directions for the accumulation of the rents and profits of real property, except such as are allowed by statute, shall be void. An accumulation of rents and profits of real property, for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real property as follows:

1. If such accumulation be directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at or before the expiration of their minority.

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it must commence within the time permitted, by the provisions of this article, for the vesting of future estates, and during the minority of the beneficiaries, and shall terminate at or before the expiration of such minority.

3. If in either case such direction be for a longer term than during the minority of the beneficiaries it shall be void only as to the time beyond such minority.

§ 52. **Anticipation of directed accumulation.**— Where such rents and profits are directed to be accumulated for the benefit of a minor entitled to the expectant estate, and such minor is destitute of other sufficient means of support and education, the supreme court, at a special term, or, if such accumulation has been directed by will, the surrogate's court of the county in which such will has been admitted to probate, may, on the application of his general or testamentary guardian, direct a suitable sum out of such rents and profits to be applied to his maintenance or education.

§ 53. **Undisposed profits.**—When, in consequence of a valid limitation of an expectant estate, there is a suspension of the power of alienation, or of the ownership, during the continuance of which the rents and profits are undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate.

§ 54. **When expectant estates are deemed created.**—Where an expectant estate is created by grant, the delivery of the grant, and, where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate.

§ 55. **Estates in severalty, joint tenancy and in common.**— Estates in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy and in common; the nature and properties of which respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter.

§ 56. **When estate in common; when in joint tenancy.**— Every estate granted or devised to two or more persons in their own right, shall be a tenancy in common, unless expressly declared

to be in joint tenancy; but every estate vested in executors or trustees as such, shall be held by them in joint tenancy. This section shall apply as well to estates already created or vested as to estates hereafter granted or devised.

ARTICLE III.

Uses and Trusts.

Section 70. Executed uses existing.
71. Certain uses and trusts abolished.
72. When right to possession creates legal ownership.
73. Trustees of passive trust not to take.
74. Grant to one where consideration paid by another.
75. Bona fide purchasers protected.
76. Purposes for which express trusts may be created.
77. Certain devises to be deemed powers.
78. Surplus income of trust property liable to creditors.
79. When an authorized trust is valid as a power.
80. Trustee of express trust to have whole estate.
81. Qualification of last section.
82. Interest remaining in grantor of express trust.
83. What trust interest may be aliened.
84. Transferee of trust property protected.
85. When trustee may convey trust property.
86. When trustee may lease trust property.
87. Notice to beneficiary where trust property is conveyed, mortgaged or leased.
88. Person paying money to trustee protected.
89. When estate of trustee ceases.
90. Termination of trusts for the benefit of creditors.
91. Trust estate not to descend.
92. Resignation or removal of trustee and appointment of successor.
93. Grants and devises of real property for charitable purposes.

Section 70. **Executed uses existing.**— Every estate which is now held as a use, executed under any former statute of the state, is confirmed as a legal estate.

§ 71. **Certain uses and trusts abolished.**— Uses and trusts concerning real property, except as authorized and modified by this

article, have been abolished; every estate or interest in real property is deemed a legal right, cognizable as such in the courts, except as otherwise prescribed in this chapter.

§ 72. **When right to possession creates legal ownership.**—Every person, who, by virtue of any grant, assignment or devise, is entitled both to the actual possession of real property, and to the receipt of the rents and profits thereof, in law or equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest; but this section does not divest the estate of the trustee in any trust existing on the first day of January, eighteen hundred and thirty, where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

§ 73. **Trustee of passive trust not to take.**—Every disposition of real property, whether by deed or by devise, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to another to the use of, or in trust for, such person; and if made to any person to the use of, or in trust for another, no estate or interest, legal or equitable, vests in the trustee. But neither this section nor the preceding sections of this article shall extend to the trusts arising, or resulting by implication of law, nor prevent or affect the creation of such express trusts as are authorized and defined in this chapter.

§ 74. **Grant to one where consideration paid by another.**—A grant of real property for a valuable consideration, to one person, the consideration being paid by another, is presumed fraudulent as against the creditors, at that time, of the person paying the consideration, and, unless a fraudulent intent is disproved, a trust results in favor of such creditors, to an extent necessary to satisfy their just demands; but the title vests in the grantee, and no use or trust results from the payment to the person paying the consideration, or in his favor, unless the grantee either,

1. Takes the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration, or,

2. In violation of some trust, purchases the property so conveyed with money or property belonging to another.

§ 75. **Bona fide purchasers protected.**—An implied or resulting trust shall not be alleged or established, to defeat or prejudice the title of a purchaser for a valuable consideration without notice of the trust.

§ 76. **Purposes for which express trusts may be created.**—An express trust may be created for one or more of the following purposes:

1. To sell real property for the benefit of creditors;

2. To sell, mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon;

3. To receive the rents and profits of real property, and apply them to the use of any person, during the life of that person, or for any shorter term, subject to the provisions of law relating thereto;

4. To receive the rents and profits of real property, and to accumulate the same for the purposes, and within the limits, prescribed by law.

§ 77. **Certain devises to be deemed powers.**—A devise of real property to an executor or other trustee, for the purpose of sale or mortgage, where the trustee is not also empowered to receive the rents and profits, shall not vest any estate in him; but the trust shall be valid as a power, and the real property shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

§ 78. **Surplus income of trust property liable to creditors.**—Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum necessary for the education and support of the beneficiary, shall be liable to the claims of his creditors in the same manner as other personal property, which can not be reached by execution.

§ 79. **When an authorized trust is valid as a power.**—Where an express trust relating to real property is created for any purpose not specified in the preceding sections of this article, no estate shall vest in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions of this chapter. Where a trust is valid as a power, the real property to which the trust relates shall

remain in or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

§ 80. **Trustee of express trust to have whole estate.**— Except as otherwise prescribed in this chapter, an express trust, valid as such in its creation, shall vest in the trustee the legal estate, subject only to the execution of the trust, and the beneficiary shall not take any legal estate or interest in the property, but may enforce the performance of the trust.

§ 81. **Qualification of last section.**— The last section shall not prevent any person, creating a trust, from declaring to whom the real property, to which the trust relates, shall belong, in the event of the failure or termination of the trust, or from granting or devising the property, subject to the execution of the trust. Such a grantee or devisee shall have a legal estate in the property, as against all persons, except the trustees, and those lawfully claiming under him.

§ 82. **Interest remaining in grantor of express trust.**—Where an express trust is created, every legal estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to, the person creating the trust or his heirs.

§ 83. **What trust interest may be alienated.**— The right of a beneficiary of an express trust to receive rents and profits of real property and apply them to the use of any person, can not be transferred by assignment or otherwise; but the right and interest of the beneficiary of any other trust may be transferred. Whenever a beneficiary in a trust for the receipt of the rents and profits of real property is entitled to a remainder in the whole or a part of the principal fund so held in trust subject to his beneficial estate for a life or lives, or a shorter term, he may release his interest in such rents and profits, and thereupon the estate of the trustee shall cease in that part of such principal fund to which such beneficiary has become entitled in remainder, and such trust estate merges in such remainder.

§ 84. **Transferee of trust property protected.**— Where an express trust is created, but is not contained or declared in the conveyance to the trustee, the conveyance shall be deemed absolute as to the subsequent creditors of the trustee not having notice of the trust, and as to subsequent purchasers from the trustee, without notice and for a valuable consideration.

§ 85. **When trustee may convey trust property.**— If the trust is expressed in the instrument creating the estate, every sale, conveyance or other act of the trustee, in contravention of the trust, except as provided in this section, shall be absolutely void. The supreme court may, by order, on such terms and conditions as seem just and proper, authorize any such trustee to mortgage or sell such real property, or any part thereof, whenever it appears to the satisfaction of the court that it is for the best interest of such estate, or that it is necessary and for the benefit of the estate, to raise funds for the purpose of preserving and improving it; and whenever the interest of the trust estate in any real property is an undivided part or share thereof, the same may be sold, if it shall appear to the court to be for the best interest of such estate.

§ 86. **When trustee may lease trust property.**— A trustee appointed to hold real property during the life of a beneficiary, and to pay or apply the rents, income and profits thereof to, or for, the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five years, without application to the court. The supreme court may, by order, on such terms and conditions as seem just and proper, in respect to rental and renewals, authorize such a trustee to lease such real property for a term exceeding five years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay at the end of the term, or renewed term, to the lessee the then fair and reasonable value of any building which may have been erected on the premises during such term. If any such trustee has leased any such trust property before June fourth, eighteen hundred and ninety-five, for a longer term than five years, the supreme court, on the application of such trustee, may, by order, confirm such lease, and such order, on the entry thereof, shall be binding on all persons interested in the trust estate.

§ 87. **Notice to beneficiary where trust property is conveyed, mortgaged or leased.**— The supreme court shall not grant an order under either of the last two preceding sections, unless it appears to the satisfaction of such court that a written notice, stating the time and place of the application therefor, has been served upon the beneficiary of such trust property, at least eight

days before the making thereof, if such beneficiary is an adult within the state; or if a minor, lunatic, person of unsound mind, habitual drunkard or absentee, until proof of the service on such person of such notice as the court, or a justice thereof, prescribes.

§ 88. **Person paying money to trustee protected.**— A person who shall actually and in good faith pay a sum of money to a trustee, which the trustee as such is authorized to receive, shall not be responsible for the proper application of the money, according to the trust; and any right or title derived by him from the trustee in consideration of the payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money paid.

§ 89. **When estate of trustee ceases.**— When the purpose for which an express trust is created ceases, the estate of the trustee shall also cease.

§ 90. **Termination of trusts for the benefit of creditors.**— Where an estate or interest in real property has heretofore vested or shall hereafter vest in the assignee or other trustee for the benefit of creditors, it shall cease at the expiration of twenty-five years from the time when the trust was created, except where a different limitation is contained in the instrument creating the trust, or is especially prescribed by law. The estate or interest remaining in the trustee or trustees shall thereon revert to the assignor, his heirs, devisee or assignee, as if the trust had not been created.

§ 91. **Trust estate not to descend.**— On the death of the last surviving or sole trustee of an express trust, the trust estate shall not descend to his heirs nor pass to his next of kin or personal representatives; but in the absence of a contrary direction on the part of the person creating the same, such trust, if unexecuted, shall vest in the supreme court, with all the powers and duties of the original trustee, and shall be executed by some person appointed for that purpose under the direction of the court, who shall not be appointed until the beneficiary thereof shall have been brought into court by such notice in such manner as the court or a justice thereof may direct.

§ 92. **Resignation or removal of trustee and appointment of successor.**— The supreme court has power, subject to the regulations established for the purpose in the general rules of practice:

1. On his application by petition or action, to accept the resignation of a trustee, and to discharge him from the trust on such terms as are just.

2. In an action brought, or on a petition presented, by any person interested in the trust, to remove a trustee who has violated or threatens to violate his trust, or who is insolvent, or whose insolvency is apprehended, or who for any other cause shall be deemed to be an unsuitable person to execute the trust.

3. In case of the resignation or removal of a trustee, to appoint a new trustee in his place, and in the meantime, if there is no acting trustee, to cause the trust to be executed by a receiver or other officer under its direction. This section shall not apply to a trust arising or resulting by implication of law, nor where other provision is specially made by law, for the resignation or removal of a trustee or the appointment of a new trustee.

§ 93. **Grants and devises of real property for charitable purposes.** — A conveyance or devise of real property for religious, educational, charitable or benevolent uses, which is in other respects valid, is not to be deemed invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument making such conveyance or devise. If in such instrument, a trustee is named to execute the same, the legal title to the real property granted or devised shall vest in such trustee. If no person is named as trustee, the title to such real property vests in the supreme court, and such court shall have control thereof. The attorney-general shall represent the beneficiaries in such cases and enforce such trusts by proper proceedings.

ARTICLE IV.

Powers.

Section 110. Effect of article.
111. Definition of a power.
112. Definitions of grantor, grantee.
113. Division of powers.
114. General power.
115. Special power.
116. Beneficial power.

Section 117. General power in trust.
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120. How power may be granted.
121. Capacity to take and execute a power.
122. Capacity of married woman to take power.
123. Capacity to take a special and beneficial power.
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129. When estate for life or years is changed into a fee.
130. Certain powers create a fee.
131. When grantee of power has absolute fee.
132. Effect of power to devise in certain cases.
133. When power of disposition absolute.
134. Power subject to condition.
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137. When a trust power is imperative.
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142. When creditors may compel execution of trust power.
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144. Effect of insolvent assignment.
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147. Execution of power to dispose by devise.
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149. When direction by grantor does not render power void.
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152. Intent of grantor to be observed.

Section 153. Consent of grantor or third person to execution of power.
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156. When devise operates as an execution of the power.
157. Disposition not void because too extensive.
158. Computation of term of suspension.
159. Capacity to take under a power.
160. Purchaser under defective execution.
161. Instrument affected by fraud.
162. Sections applicable to trust powers.

Section 110. Effect of article.— Powers, as they existed by law on the thirty-first day of December, eighteen hundred and twenty-nine, have been abolished. Hereafter the creation, construction and execution of powers, affecting real property, shall be subject to the provisions of this article; but this article does not extend to a simple power of attorney, to convey real property in the name, and for the benefit of the owner.

§ 111. Definition of a power.—A power is an authority to do an act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner, granting or reserving the power, might himself lawfully perform.

§ 112. Definitions of grantor, grantee.— The word "grantor" is used in this article, in connection with a power, as designating the person by whom the power is created, whether by grant or by devise; and the word "grantee" is so used as designating the person in whom the power is vested, whether by grant, devise or reservation.

§ 113. Division of powers.—A power, as authorized in this article, is either general or special, and either beneficial or in trust.

§ 114. General power.—A power is general, where it authorizes the transfer or encumbrance of a fee, by either a conveyance or a will of or a charge on the property embraced in the power, to any grantee whatever.

§ 115. Special power.—A power is special where either:

1. The persons or class of persons to whom the disposition of the property under the power is to be made are designated; or,

2. The power authorizes the transfer or encumbrance, by a conveyance, will or charge, of any estate less than a fee.

§ 116. Beneficial power.—A general or special power is beneficial, where no person, other than the grantee, has, by the term of its creation, any interest in its execution. A beneficial power, general or special, other than one of those specified and defined in this article, is void.

§ 117. General power in trust.—A general power is in trust, where any person or class of persons, other than the grantee of the power, is designated as entitled to the proceeds, or any portion of the proceeds, or other benefits to result from its execution.

§ 118. Special power in trust.—A special power is in trust, where either,

1. The disposition or charge which it authorizes is limited to be made to a person or class of persons, other than the grantee of the power; or,

2. A person or class of persons, other than the grantee, is designated as entitled to any benefit, from the disposition or charge authorized by the power.

§ 119. Capacity to grant a power.—A person is not capable of granting a power, who is not, at the same time, capable of transferring an interest in the property to which the power relates.

§ 120. How power may be granted.—A power may be granted either:

1. By a suitable clause, contained in an instrument sufficient to pass an estate in the real property, to which the power relates; or,

2. By a devise contained in a will.

§ 121. Capacity to take and execute a power.—A power may be vested in any person capable in law of holding, but can not be exercised by a person not capable of transferring real property.

§ 122. Capacity of married woman to take power.—A general and beneficial power may be given to a married woman, to dispose, during her marriage, and without concurrence of her husband, of real property conveyed or devised to her in fee.

§ 123. Capacity to take a special and beneficial power.—A special and beneficial power may be granted,

1. To a married woman, to dispose, during the marriage, and without the concurrence of her husband, of any estate less than a fee, belonging to her, in the property to which the power relates; or,

2. To a tenant for life, of the real property embraced in the power, to make leases for not more than twenty-one years, and

to commence in possession during his life; and such a power is valid to authorize a lease for that period but is void as to the excess.

§ 124. Reservation of a power.— The grantor in a conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and a power thus reserved, shall be subject to the provisions of this article, in the same manner as if granted to another.

§ 125. Effect of power to revoke.— Where the grantor in a conveyance reserves to himself for his own benefit, an absolute power of revocation, he is to be still deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

§ 126. Power to sell in a mortgage.— Where a power to sell real property is given to a mortgagee, or to the grantee in any other conveyance intended to secure the payment of money, the power is deemed a part of the security, and vests in, and may be executed by any person who, by assignment or otherwise, becomes entitled to the money so secured to be paid.

§ 127. When power is a lien.— A power is a lien or charge on the real property which it embraces, as against creditors, purchasers and encumbrancers in good faith and without notice, of or from a person having an estate in the property, only from the time the instrument containing the power is duly recorded. As against all other persons, the power is a lien from the time the instrument in which it is contained takes effect.

§ 128. When power is irrevocable.— A power, whether beneficial or in trust, is irrevocable, unless an authority to revoke it is granted or reserved in the instrument creating the power.

§ 129. When estate for life or years is changed into a fee.— Where an absolute power of disposition, not accompanied by a trust, is given to the owner of a particular estate for life or for years, such estate is changed into a fee absolute in respect to the rights of creditors, purchasers and encumbrancers, but subject to any future estates limited thereon, in case the power of absolute disposition is not executed, and the property is not sold for the satisfaction of debts.

§ 130. Certain powers create a fee.—Where a like power of disposition is given to a person to whom no particular estate is limited, such person also takes a fee, subject to any future

estates that may be limited thereon, but absolute in respect to creditors, purchasers and encumbrancers.

§ 131. When grantee of power has absolute fee.—Where such a power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee is entitled to an absolute fee.

§ 132. Effect of power to devise in certain cases.—Where a general and beneficial power to devise the inheritance is given to a tenant for life, or for years, such tenant is deemed to possess an absolute power of disposition within the meaning of and subject to the provisions of the last three sections.

§ 133. When power of disposition absolute.— Every power of disposition by means of which the grantee is enabled, in his lifetime, to dispose of the entire fee for his own benefit, is deemed absolute.

§ 134. Power subject to condition.— A general and beneficial power may be created subject to a condition precedent or subsequent, and until the power become absolutely vested it is not subject to any provision of the last four sections.

§ 135. Power of life tenant to make leases.— The power of a tenant for life to make leases is not assignable as a separate interest, but is annexed to his estate, and passes by a grant of such estate unless specially excepted. If so excepted, it is extinguished. Such a power may be released by the tenant to a person entitled to an expectant estate in the property, and shall thereupon be extinguished.

§ 136. Effect of mortgage by grantee.— A mortgage executed by a tenant for life, having a power to make leases, does not extinguish or suspend the power; but the power is bound by the mortgage in the same manner as the real property embraced therein, and the effects on the power of such lien by mortgage are:

1. That the mortgagee is entitled to an execution of the power so far as the satisfaction of his debt requires; and,

2. That any subsequent estate, created by the owner, in execution of the power, becomes subject to the mortgage as if in terms embraced therein.

§ 137. When a trust power is imperative.— A trust power, unless its execution or nonexecution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on

the grantee, the performance of which may be compelled for the benefit of the person interested. A trust power does not cease to be imperative where the grantee has the right to select any, and exclude others, of the persons designated as the beneficiaries of the trust.

§ 138. Distribution when more than one beneficiary.—Where a disposition under a power is directed to be made to, among, or between, two or more persons, without any specification of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion; but when the terms of the power import that the estate or fund is to be distributed among the persons so designated, in such manner or proportions as the grantee of the power thinks proper, the grantee may allot the whole to any one or more of such persons in exclusion of the others.

§ 139. Beneficial power subject to creditors.—A special and beneficial power is liable to the claims of creditors in the same manner as other interests that can not be reached by execution; and the execution of the power may be adjudged for the benefit of the creditors entitled.

§ 140. Execution of power on death of trustee.— If the trustee of a power, with the right of selection, dies leaving the power unexecuted, its execution must be adjudged for the benefit, equally, of all the persons designated as beneficiaries of the trust.

§ 141. When power devolves on court.—Where a power in trust is created by will, and the testator has omitted to designate by whom the power is to be executed, its execution devolves on the supreme court.

§ 142. When creditors may compel execution of trust power.— The execution, wholly or partly, of a trust power may be adjudged for the benefit of the creditors or assignees of a person entitled as a beneficiary of the trust, to compel its execution, where his interest is assignable.

§ 143. Defective execution of trust power.— Where the execution of a power in trust is defective, wholly or partly, under the provisions of this article, its proper execution may be adjudged in favor of the person designated as the beneficiary of the trust.

§ 144. Effect of insolvent assignment.—A beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass, respectively, to a trustee or committee

of the estate of the person in whom the power or interest is vested, or an assignee for the benefit of creditors.

§ 145. How power must be executed.— A power can be executed only by a written instrument, which would be sufficient to pass the estate, or interest, intended to pass under the power, if the person executing the power were the actual owner.

§ 146 Execution by survivors.—Where a power is vested in two or more persons, all must unite in its execution; but if before its execution, one or more of such persons dies, the power may be executed by the survivor or survivors.

§ 147. Execution of power to dispose by devise.— Where a power to dispose of real property is confined to a disposition by devise or will, the instrument must be a written will, executed as required by law.

§ 148. Execution of power to dispose by grant.—Where a power is confined to a disposition by grant, it can not be executed by will, although the disposition is not intended to take effect until after the death of the person executing the power.

§ 149. When direction by grantor does not render power void.— Where the grantor of a power has directed or authorized it to be executed by an instrument not sufficient in law to pass the estate, the power is not void, but its execution is to be governed by the provisions of this article.

§ 150. When directions by grantor need not be followed.— Where the grantor of a power has directed any formality to be observed in its execution, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formality is not necessary to the valid execution of the power.

§ 151. Nominal conditions may be disregarded.— Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

§ 152. Intent of grantor to be observed.— Except as provided in this article, the intentions of the grantor of a power as to the manner, time and conditions of its execution must be observed; subject to the power of the supreme court, to supply a defective execution as provided in this article.

§ 153. Consent of grantor or third person to execution of power.— Where the consent of the grantor or a third person to

the execution of a power is requisite, such consent shall be expressed in the instrument by which the power is executed, or in a written certificate thereon. In the first case, the instrument of execution, in the second, the certificate, must be subscribed by the person whose consent is necessary; and to entitle the instrument to be recorded, such signature must be acknowledged or proved and certified in like manner as a deed to be recorded.

§ 154. When all must consent.— Where the consent of two or more persons to the execution of a power is requisite, all must consent thereto; but if, before its execution, one or more of them die, the consent of the survivor or survivors is sufficient, unless otherwise prescribed by the terms of the power.

§ 155. Omission to recite power.— An instrument executed by the grantee of a power, conveying an estate or creating a charge, which he would have no right to convey or create, except by virtue of the power, shall be deemed a valid execution of the power, although the power be not recited or referred to therein.

§ 156. When devise operates as an execution of the power.— Real property embraced in a power to devise passes by a will purporting to convey all the real property of the testator, unless the intent that the will is not to operate as an execution of the power, appears, either expressly or by necessary implication.

§ 157. Disposition not void because too extensive.— A disposition or charge by virtue of a power is not void on the ground that it is more extensive than was authorized by the power; but an estate or interest so created, so far as embraced by the terms of the power, is valid.

§ 158. Computation of term of suspension.— The period during which the absolute right of alienation may be suspended, by an instrument in execution of a power must be computed, not from the date of such instrument, but from the time of the creation of the power.

§ 159. Capacity to take under a power.— An estate or interest can not be given or limited to any person, by an instrument in execution of a power, unless it would have been valid, if given or limited at the time of the creation of the power.

§ 160. Purchase under defective execution.— A purchaser for a valuable consideration, claiming under a defective execution of a power, is entitled to the same relief as a similar purchaser, claiming under a defective conveyance from an actual owner.

§ 161. Instrument affected by fraud.— An instrument in execution of a power is affected by fraud, in the same manner as a conveyance or will, executed by an owner or by a trustee.

§ 162. Sections applicable to trust powers.— Sections ninety-one to ninety-three of this chapter, both inclusive, in relation to express trust estates, and the trustee thereof, apply equally to trust powers, however created, and to the grantees of such powers.

ARTICLE V.

Dower.

Section 170. Dower.
171. Dower in lands exchanged.
172. Dower in land mortgaged before marriage.
173. Dower in lands mortgaged for purchase money.
174. Surplus proceeds of sale under purchase money mortgages.
175. Widow of mortgagee not endowed.
176. When dower barred by misconduct.
177. When dower barred by jointure.
178. When dower barred by pecuniary provisions.
179. When widow to elect between jointure and dower.
180. Election between devise and dower.
181. When deemed to have elected.
182. When provision in lieu of dower is forfeited.
183. Effect of acts of husband.
184. Widow's quarantine.
185. Widow may bequeath crop.
186. Divorced woman may release dower.
187. Married woman may release dower by attorney.

Section 170. Dower.— A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage.

§ 171. Dower in lands exchanged.— If a husband seized of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but she must make her election, to be endowed of the lands given, or of those taken, in

exchange; and if her election be not evinced by the commencement of an action to recover her dower of the lands given in exchange, within one year after the death of her husband, she is deemed to have elected to take her dower of the lands received in exchange.

§ 172. **Dower in lands mortgaged before marriage.**— Where a person seized of an estate of inheritance in lands, executes a mortgage thereof, before marriage, his widow is, nevertheless, entitled to dower of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

§ 173. **Dower in lands mortgaged for purchase-money.**—Where a husband purchases lands during the marriage, and at the same time mortgages his estate in those lands to secure the payment of the purchase-money, his widow is not entitled to dower of those lands, as against the mortgagee or those claiming under him, although she did not unite in the mortgage. She is entitled to her dower as against every other person.

§ 174. **Surplus proceeds of sale, under purchase-money mortgages.**—Where, in a case specified in the last section, the mortgagee, or a person claiming under him, causes the land mortgaged to be sold, after the death of the husband, either under a power of sale contained in the mortgage, or by virtue of a judgment in an action to foreclose the mortgage, and any surplus remains, after payment of the money due on the mortgage and the costs and charges of the sale, the widow is nevertheless entitled to the interest or income of one-third part of the surplus for her life, as her dower.

§ 175. **Widow of mortgagee not endowed.**—A widow shall not be endowed of the lands conveyed to her husband by way of mortgage, unless he acquires an absolute estate therein, during the marriage.

§ 176. **When dower barred by misconduct.**— In case of a divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

§ 177. **When dower barred by jointure.**—Where an estate in real property is conveyed to a person and his intended wife, or to the intended wife alone, or to a person in trust for them or for the intended wife alone, for the purpose of creating a jointure for her, and with her assent, the jointure bars her right or claim of dower in all the lands of the husband. The assent of the wife

to such a jointure is evidenced, if she be of full age, by her becoming a party to the conveyance by which it is settled; if she be a minor, by her joining with her father or guardian in that conveyance.

§ 178. **When dower barred by pecuniary provisions.**—Any pecuniary provision, made for the benefit of an intended wife and in lieu of dower, if assented to by her as prescribed in the last section, bars her right or claim of dower in all the lands of her husband.

§ 179. **When widow to elect between jointure and dower.**—If, before the marriage, but without her assent, or, if after the marriage, real property is given or assured for the jointure of a wife, or a pecuniary provision is made for her, in lieu of dower, she must make her election whether she will take the jointure or pecuniary provision, or be endowed of the lands of her husband; but she is not entitled to both.

§ 180. **Election between devise and dower.**—If real property is devised to a woman, or a pecuniary or other provision is made for her by will in lieu of her dower, she must make her election whether she will take the property so devised, or the provision so made, or be endowed of the lands of her husband; but she is not entitled to both.

§ 181. **When deemed to have elected.**—Where a woman is entitled to an election, as prescribed in either of the last two sections, she is deemed to have elected to take the jointure, devise or pecuniary provision, unless within one year after the death of her husband she enters upon the lands assigned to her for her dower, or commences an action for her dower. But, during such period of one year after the death of her said husband, her time to make such election may be enlarged by the order of any court competent to pass on the accounts of executors, administrators or testamentary trustees, or to admeasure dower, on an affidavit showing the pendency of a proceeding to contest the probate of the will containing such jointure, devise or pecuniary provision, or of an action to construe or set aside such will, or that the amount of claims against the estate of the testator can not be ascertained within the period so limited, or other reasonable cause, and on notice given to such persons, and in such manner, as such court may direct. Such order shall be indexed and recorded in the same manner as a notice of pendency of action in

the office of the clerk of each county wherein the real property or a portion thereof affected thereby is situated.

§ 182. **When provision in lieu of dower is forfeited.**— Every jointure, devise and pecuniary provision in lieu of dower is forfeited by the woman for whose benefit it is made in a case in which she would forfeit her dower; and on such forfeiture, an estate so conveyed for jointure, or devised, or a pecuniary provision so made, immediately vests in the person or legal representatives of the person in whom they would have vested on the determination of her interest therein, by her death.

§ 183. **Effect of acts of husband.**—An act, deed, or conveyance, executed or performed by the husband without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the contingent right of dower of a married woman, or a judgment or decree confessed by or recovered against him, or any laches, default, covin, or crime of a husband, does not prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof.

§ 184. **Widow's quarantine.**—A widow may remain in the chief house of her husband forty days after his death, whether her dower is sooner assigned to her or not, without being liable to any rent for the same; and in the meantime she may have her reasonable sustenance out of the estate of her husband.

§ 185. **Widow may bequeath a crop.**—A woman may bequeath a crop in the ground of land held by her in dower.

§ 186. **Divorced woman may release dower.**—A woman who is divorced from her husband, whether such divorce be absolute or limited, or granted in his or her favor, by any court of competent jurisdiction, may release to him, by an instrument in writing, sufficient to pass title to real estate, her inchoate right of dower in any specific real property theretofore owned by him, or generally in all such real property, and such as he shall thereafter acquire.

§ 187. **Married woman may release dower by attorney.**— A married woman of full age may release her inchoate right of dower in real property by attorney in fact in any case where she can personally release the same.

ARTICLE VI.

Landlord and Tenant.

Section 190. Action for use and occupation.
191. Rent due on life leases recoverable.
192. When rent is apportionable.
193. Rights where property or lease is transferred.
194. Attornment by tenant.
195. Notice of action adverse to possession of tenant.
196. Effect of renewal on sub-lease.
197. When tenant may surrender premises.
198. Termination of tenancies at will or by sufferance, by notice.
199. Liability of tenant holding over after giving notice of intention to quit.
200. Liability of tenant holding over after giving notice to quit.
201. Liability of landlord where premises are occupied for unlawful purpose.
202. Duration of certain agreements in New York.

Section 190. Action for use and occupation.— The landlord may recover a reasonable compensation for the use and occupation of real property, by any person, under an agreement, not made by deed; and a parol lease or other agreement may be used as evidence of the amount to which he is entitled.

§ 191. Rent due on life leases recoverable.— Rent due on a lease for life or lives, is recoverable by action, as well after as before the death of the person on whose life the rent depends, and in the same manner as rent due on a lease for years.

§ 192. When rent is apportionable.— Where a tenant for life, who shall have demised the real property, dies before the first rent day, or between two rent days, his executor or administrator may recover the proportion of rent which accrued to him before his death.

§ 193. Rights where property or lease is transferred.— The grantee of leased real property, or of a reversion thereof, or of any rent, the devisee or assignee of the lessor of such a lease, or the heir or personal representative of either of them, has the same remedies, by entry, action or otherwise, for the nonperformance

of any agreement contained in the assigned lease for the recovery of rent, for the doing of any waste, or for other cause of forfeiture as his grantor or lessor had, or would have had, if the reversion had remained in him. A lessee of real property, his assignee or personal representative, has the same remedy against the lessor, his grantee or assignee, or the representative of either, for the breach of an agreement contained in the lease, that the lessee might have had against his immediate lessor, except a covenant against incumbrances or relating to the title or possession of the premises leased. This section applies as well to a grant or lease in fee, reserving rent, as to a lease for life or for years; but not to a deed of conveyance in fee, made before the ninth day of April, eighteen hundred and five, or after the fourteenth day of April, eighteen hundred and sixty.

§ 194. **Attornment by tenant.**— The attornment of a tenant to a stranger is absolutely void, and does not in any way affect the possession of the landlord unless made either:

1. With the consent of the landlord; or,

2. Pursuant to or in consequence of a judgment, order, or decree of a court of competent jurisdiction; or,

3. To a mortgagee, after the mortgage has become forfeited.

§ 195. **Notice of action adverse to possession of tenant.**— Where a process or summons in an action to recover the real property occupied by him, or the possession thereof, is served upon a tenant, he must forthwith give notice thereof to his landlord; otherwise he forfeits the value of three years' rent of such property, to the landlord or other person of whom he holds.

§ 196. **Effect of renewal on sub-lease.**— The surrender of an under-lease is not requisite to the validity of the surrender of the original lease, where a new lease is given by the chief landlord. Such a surrender and renewal do not impair any right or interest of the chief landlord, his lessee or the holder of an underlease, under the original lease; including the chief landlord's remedy by entry, for the rent or duties secured by the new lease, not exceeding the rent and duties reserved in the original lease surrendered.

§ 197. **When tenant may surrender premises.**— Where any building, which is leased or occupied, is destroyed or so injured by the elements, or any other cause as to be untenantable, and unfit for occupancy, and no express agreement to the contrary

has been made in writing, the lessee or occupant may, if the destruction or injury occurred without his fault or neglect, quit and surrender possession of the leasehold premises, and of the land so leased or occupied; and he is not liable to pay to the lessor or owner, rent for the time subsequent to the surrender.

§ 198. **Termination of tenancies at will or by sufferance by notice.**— A tenancy at will or by sufferance, however created, may be terminated by a written notice of not less than thirty days given in behalf of the landlord, to the tenant, requiring him to remove from the premises; which notice must be served, either by delivering to the tenant or to a person of suitable age and discretion, residing upon the premises, or if neither the tenant nor such a person can be found, by affixing it upon a conspicuous part of the premises, where it may be conveniently read. At the expiration of thirty days after the service of such notice, the landlord may re-enter, maintain ejectment, or proceed, in the manner prescribed by law, to remove the tenant, without further or other notice to quit.

§ 199. **Liability of tenant holding over after giving notice of intention to quit.**— If a tenant gives notice of his intention to quit the premises held by him, and does not accordingly deliver up the possession thereof, at the time specified in such notice, he or his personal representatives must, so long as he continues in possession, pay to the landlord, his heirs or assigns, double the rent which he should otherwise have paid, to be recovered at the same time, and in the same manner, as the single rent.

§ 200. **Liability of tenant holding over after giving* notice to quit.**—Where, on the termination of an estate for life, or for years, the person entitled to the possession demands the same, and serves, in the same manner as for the termination of a tenancy at will, a written notice to quit, if the tenant, or any person in possession under him, or by collusion with him, willfully holds over, after the expiration of thirty days from such service, he must pay to the person so kept out of possession, or his representatives, at the rate of double the yearly value of the property detained, for the time while he so detains the same, together with all damages incurred by the person so kept out by reason of such detention. There is no equitable defense or relief against a demand accrued, or a recovery had, under this section.

*So in the original.

§ 201. Liability of landlord where premises are occupied for unlawful purpose.—The owner of real property, knowingly leasing or giving possession of the same to be used or occupied, wholly or partly, for any unlawful trade, manufacture or business, or knowingly permitting the same to be so used, is liable severally, and also jointly with one or more of the tenants or occupants thereof, for any damage resulting from such unlawful use, occupancy, trade, manufacture or business.

§ 202. Duration of certain agreements in New York.—An agreement, for the occupation of real property in the city of New York, which shall not particularly specify the duration of the occupation, shall be deemed to continue until the first day of May, next after the possession commences under the agreement; and rent thereunder is payable at the usual quarter days, for the payment of rent in that city, unless otherwise expressed in the agreement.

ARTICLE VII.

Conveyances and Mortgages.

Section 205. Definitions and use of terms.
206. Livery of seizin abolished.
207. When written conveyance necessary.
208. Grant of fee or freehold.
209. When grant takes effect.
210. Estate which passes by grant or devise.
211. Certain deeds declared grants.
212. Conveyance by tenant for life or years of greater estate than possessed.
213. Effect of conveyance where property is leased.
214. Covenants in mortgages.
215. Mortgages on real property inherited or devised.
216. Covenants not implied.
217. Lineal and collateral warranties abolished.
218. Construction of covenants in grants of freehold interests.
219. Construction of covenants in mortgages and bonds.
220. Construction of grant of appurtenances and of all the rights and estate of grantor.
221. Construction of grant in executor's or trustee's deed of appurtenances, and of the estate of testator and grantor.

Section 222. Covenants to bind representatives of grantor and mortgagor and enure to the benefit of whom.
223. Short forms of deeds and mortgages.
224. When contract to lease or sell void.
225. Effect of grant or mortgage of real property adversely possessed.
226. Conveyances with intent to defraud purchasers and incumbrancers void.
227. Conveyances with intent to defraud creditors void.
228. Conveyances void as to creditors, purchasers and incumbrancers, void as to heirs and assigns.
229. Fraudulent intent, question of fact.
230. Rights of purchaser or incumbrancer for valuable consideration protected.
231. Conveyances with power to revoke, determine or alter.
232. Disaffirmance of fraudulent act by executor and others.
233. When remainderman may pay interest owed by life tenant.
234. Powers of courts of equity not abridged.

§ 205. **Definitions and use of terms.**— The term "heirs," or other words of inheritance, are not requisite to create or convey an estate in fee. The term "conveyance," as used in this article, includes every instrument, in writing, except a will, by which any estate or interest in real property is created, transferred, assigned or surrendered. Every instrument creating, transferring, assigning or surrendering an estate or interest in real property must be construed according to the intent of the parties, so far as such intent can be gathered from the whole instrument, and is consistent with the rules of law. The terms "estate" and "interest in real property," include every such estate and interest, freehold or chattel, legal or equitable, present or future, vested or contingent.

§ 206. **Livery of seizin abolished.**—The conveyance of real property by feoffment, with livery of seizin, has been abolished.

§ 207. **When written conveyance necessary.**—An estate or interest in real property, other than a lease for a term not exceeding one year, or any trust or power, over or concerning real prop-

erty, or in any manner relating thereto, can not be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. But this section does not affect the power of a testator in the disposition of his real property by will; nor prevent any trust from arising or being extinguished by implication or operation of law, nor any declaration of trust from being proved by a writing subscribed by the person declaring the same.

§ 208. **Grant of fee or freehold.**—A grant in fee or of a freehold estate, must be subscribed by the person from whom the estate or interest conveyed is intended to pass, or by his lawful agent. If not duly acknowledged before its delivery, according to the provisions of this chapter, its execution and delivery must be attested by at least one witness, or, if not so attested, it does not take effect as against a subsequent purchaser or encumbrancer until so acknowledged.

§ 209. **When grant takes effect.**—A grant takes effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law, now in force, in respect to the delivery of deeds, apply to grants hereafter executed.

§ 210. **Estate which passes by grant or devise.**—A grant or devise of real property passes all the estate or interest of the grantor or testator unless the intent to pass a less estate or interest appears by the express terms of such grant or devise or by necessary implication therefrom. A greater estate or interest does not pass by any grant or conveyance, than the grantor possessed or could lawfully convey, at the time of the delivery of the deed; except that every grant is conclusive against the grantor and his heirs claiming from him by descent, and as against a subsequent purchaser or encumbrancer from such grantor, or from such heirs claiming as such, other than a subsequent purchaser or encumbrancer, in good faith and for a valuable consideration, who acquires a superior title by a conveyance that has been first duly recorded.

§ 211. **Certain deeds declared grants.**— Deeds of bargain and sale, and of lease and release, may continue to be used; and are to be deemed grants, subject to all the provisions of law in relation thereto.

§ 212. **Conveyance by tenant for life or years of greater estate than possessed.**—A conveyance made by a tenant for life or years, of a greater estate than he possesses, or can lawfully convey, does not work a forfeiture of his estate, but passes to the grantee all the title, estate or interest which such tenant can lawfully convey.

§ 213. **Effect of conveyance where property is leased.**—An attornment to a grantee is not requisite to the validity of a conveyance of real property occupied by a tenant, or of the rents or profits thereof, or any other interest therein. But the payment of rent to a grantor, by his tenant, before notice of the conveyance, binds the grantee; and the tenant is not liable to such grantee, before such notice, for the breach of any condition of the lease.

§ 214. **Covenants in mortgages.**—A mortgage of real property does not imply a covenant for the payment of the sum intended to be secured; and where such covenant is not expressed in the mortgage, or a bond or other separate instrument to secure such payment, has not been given, the remedies of the mortgagee are confined to the property mentioned in the mortgage.

§ 215. **Mortgages on real property inherited or devised.**—Where real property, subject to a mortgage executed by any ancestor or testator, descends to an heir, or passes to a devisee, such heir or devisee must satisfy and discharge the mortgage out of his own property, without resorting to the executor or administrator of his ancestor or testator, unless there be an express direction in the will of such testator, that such mortgage be otherwise paid.

§ 216. **Covenants not implied.**—A covenant is not implied in a conveyance of real property, whether the conveyance contains any special covenant or not.

§ 217. **Lineal and collateral warranties abolished.**—Lineal and collateral warranties, with all their incidents, have been abolished; but the heirs and devisees of a person, who has made a covenant or agreement, are answerable thereon, to the extent of the real property descended or devised to them, in the cases and in the manner prescribed by law.

§ 218. **Construction of covenants in grants of freehold interests.**—In grants of freehold interests in real property, the following or similar covenants must be construed as follows:

1. **Seizin.**— A covenant that the grantor "is seized of the said premises (described) in fee simple, and has good right to convey the same," must be constructed as meaning that such grantor, at the time of the execution and delivery of the conveyance, is lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the premises thereby conveyed, with the tenements, hereditaments and appurtenances thereto belonging, and has good right, full power and lawful authority to grant and convey the same by the said conveyance.

2. **Quiet enjoyment.**— A covenant that the grantee "shall quietly enjoy the said premises," must be construed as meaning that such grantee, his heirs, successors and assigns, shall and may, at all times thereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the grantor, his heirs, successors or assigns, or any person or persons lawfully claiming or to claim the same.

3. **Freedom from encumbrances.**—A covenant "that the said premises are free from encumbrances," must be construed as meaning that such premises are free, clear, discharged and unencumbered of and from all former and other gifts, grants, titles, charges, estates, judgments, taxes, assessments, liens and encumbrances, of what nature or kind soever.

4. **Further assurance.**— A covenant that the grantor will "execute or procure any further necessary assurance of the title to said premises," must be construed as meaning that the grantor and his heirs, or successors, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in, or to the premises conveyed by, from, under, or in trust for him or them, shall and will at any time or times thereafter upon the reasonable request, and at the proper costs and charges of the grantee, his heirs, successors and assigns, make, do, and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises thereby granted or so intended to be, in and to the grantee, his heirs, successors or assigns forever, as by the grantee, his heirs, successors

or assigns, or his or their counsel learned in the law, shall be reasonably advised or required.

5. Warranty of title.— A covenant that the grantor "will for ever warrant the title" to the said premises, must be construed as meaning that the grantor and his heirs, or successors, the premises granted, and every part and parcel thereof, with the appurtenances, unto the grantee, his heirs, successors or assigns, against the grantor and his heirs or successors, and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend.

6. Grantor has not encumbered.— A covenant that the grantor "has not done or suffered anything whereby the said premises have been encumbered," must be construed as meaning that the grantor has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered in any manner or way whatsoever.

§ 219. Construction of covenants in mortgages and bonds.— In mortgages of real property, and in bonds secured thereby, the following or similar covenants must be construed as follows:

1. Agreement that whole sum shall become due.— The words "and it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of interest for ..... days, or after default in the payment of any tax or assessment for ..... days, after notice and demand," must be construed as meaning that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due or payable, and should the said interest remain unpaid and in arrear for the space of ..... days, or such tax or assessment remain unpaid and in arrear for ..... days after written notice by the mortgagee or obligee, his executors, administrators, successors or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say,

after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said mortgagee or obligee, his executors, administrators, successors or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in any wise notwithstanding.

2. **In default of payment, mortgagee to have power to sell.**—A covenant that the mortgagor "will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee shall have power to sell the premises therein described, according to law," must be construed as meaning that the mortgagor for himself, his heirs, executors and administrators or successors, doth covenant and agree to pay to the mortgagee, his executors, administrators, successors and assigns, the principal sum of money secured by said mortgage, and also the interest thereon as provided by said mortgage. And if default shall be made in the payment of the said principal sum or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the mortgagee, his executors, administrators or successors to enter into and upon all and singular the premises granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said mortgagor, his heirs, executors, administrators, successors or assigns therein, at public auction, according to the act in such case made and provided, and as the attorney of the mortgagor for that purpose duly authorized, constituted and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the same in fee simple (or otherwise, as the case may be) and out of the money arising from such sale, to retain the principal and interest which shall then be due, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money, if any there shall be, unto the mortgagor, his heirs, executors, administrators, successors or assigns, which sale so to be made shall forever be a perpetual bar both in law and equity against the mortgagor, his heirs, successors and assigns, and

against all other persons claiming or to claim the premises, or any part thereof by, from or under him, them or any of them.

3. **Mortgagor to keep buildings insured.**— A covenant "that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee," must be construed as meaning that the mortgagor, his heirs, successors and assigns will, during all the time until the money secured by the mortgage shall be fully paid and satisfied, keep the buildings erected on the premises insured against loss or damage by fire, to an amount and in a company to be approved by the mortgagee, and will assign and deliver the policy or policies of such insurance to the mortgagee, his executors, administrators, successors or assigns, so and in such manner and form that he and they shall at all time and times, until the full payment of said moneys, have and hold the said policy or policies as a collateral and further security for the payment of said money, and in default of so doing, that the mortgagee or his executors, administrators, successors or assigns, may make such insurance from year to year, in a sum not exceeding the principal sum for the purposes aforesaid, and pay the premium or premiums therefor, and that the mortgagor will pay to the mortgagee, his executors, administrators, successors or assigns, such premium or premiums so paid, with interest from the time of payment, on demand, and that the same shall be deemed to be secured by the mortgage, and shall be collectible thereupon and thereby in like manner as the principal moneys, and in default of such payment by the mortgagor, his heirs, executors, administrators, successors or assigns, or of assignment and delivery of policies as aforesaid the whole of the principal sum and interest secured by the mortgage shall, at the option of the mortgagee, his executors, administrators, successors or assigns, immediately become due and payable.

4. **Mortgagor to give further assurance of title.**— A covenant that the mortgagor "will execute any further necessary assurance of the title to said premises, and will forever warrant said title," must be construed as meaning that the mortgagor shall and will make, execute, acknowledge and deliver in due form of law, all such further or other deeds or assurances as may at any time hereafter be reasonably desired or required for the more

fully and effectually conveying the premises by the mortgage described, and thereby granted or intended so to be, unto the said mortgagee, his executors, administrators, successors or assigns, for the purpose aforesaid, and unto all and every person or persons, corporation or corporations, deriving any estate, right, title or interest therein, under the said indenture of mortgage, or the power of sale therein contained, and the said granted premises against the said mortgagor, and all persons claiming through him will warrant and defend.

§ 220. **Construction of grant of appurtenances and of all the rights and estate of grantor.**— In any grant or mortgage of freehold interests in real estate, the words, "together with the appurtenances and all the estate and rights of the grantor in and to said premises," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, curtesy, and right of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of the said gantor of, in and to the said granted premises and every part and parcel thereof, with the appurtenances.

§ 221. **Construction of grant in executor's or trustee's deed of appurtenances, and of the estate of testator and grantor.**— In any deed by an executor of, or trustee under a will, the words "together with the appurtenances and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which said grantor has or has power to convey or dispose of, whether individually or by virtue of said will or otherwise," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, or which the said grantor has or has power to convey or dispose of, whether individually or by virtue of the said last will and testament or otherwise, of

in and to the said granted premises, and every part and parcel thereof, with the appurtenances.

§ 222. **Covenants to bind representatives of grantor and mortgagor and enure to the benefit of whom.**—All covenants contained in any grant or mortgage of real estate bind the heirs, executors, administrators, successors and assigns, of the grantor or mortgagor, and enure to the benefit of the heirs, executors, administrators, successors and assigns of the grantee or mortgagee in the same manner and to the same extent, and with like effect as if such heirs, executors, administrators, successors and assigns were so named in such covenants, unless otherwise in said grant or mortgage expressly provided.

§ 223. **Short forms of deeds and mortgages.**—The use of the following forms of instruments for the conveyance and mortgage of real property is lawful, but this section does not prevent or invalidate the use of other forms:

SCHEDULE A.

Deed With Full Covenants.

This indenture, made the.....day of....., in the year eighteen hundred and ....., between ..... of (insert residence) of the first part, and ..... of (insert residence) of the second part.

Witnesseth, that the said party of the first part, in consideration of ..... dollars lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever. And the said party of the first part doth covenant with said party of the second part as follows:

First. That the party of the first part is seized of said premises in fee simple, and has good right to convey the same.

Second. That the party of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from encumbrances.

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth. That the party of the first part will forever warrant the title to said premises.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE B.

Executor's Deed.

This indenture, made the ..... day of ....., eighteen hundred and ..... between ..... as executor of the last will and testament of ....., late of ....., deceased, of the first part, and ....., of the second part, witnesseth:

That the said party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and in consideration of ..... dollars, lawful money of the United States, paid by the said party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description) together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the said party of the first part has or has power to dispose of, whether individually, or by virtue of said will or otherwise.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part covenants with said party of the second part that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE C.

Mortgage.

This indenture, made the ..... day of ....., in the year eighteen hundred and ....., between ..... of ..... party of the first part, and ..... of ....., party of the second part.

Whereas, the said ..... is justly indebted to the said party of the second part in the sum of ..... dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of ..... dollars, on the ..... day of ....., eighteen hundred and ....., and the interest thereon, to be computed from ..... at the rate of ..... per centum per annum and to be paid .....

It being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of interest, taxes or assessments, as hereinafter provided.

Now this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar, paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (or successors) and assigns forever (description), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises. To have and hold the above granted premises unto the said party of the second part, his heirs and assigns forever. Provided always, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine and be void. And the said party of the first part covenants with the party of the second part as follows:

1. That the party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises therein described according to law.

2. That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

3. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of interest for .... days, or after default in the payment of any tax or assessment for .... days, after notice and demand.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

In the presence of:

§ 224. **When contract to lease or sell void.**—A contract for the leasing for a longer period than one year, or for the sale of any real property, or an interest therein, is void, unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the lessor or grantor, or by his lawfully authorized agent.

§ 225. **Effect of grant or mortgage of real property adversely possessed.**—A grant of real property is absolutely void, if at the time of the delivery thereof, such property is in the actual possession of a person claiming under a title adverse to that of the grantor; but such possession does not prevent the mortgaging of such property, and such mortgage, if duly recorded, binds the property from the time the possession thereof is recovered by the mortgagor or his representatives, and has preference over any judgment or other instrument, subsequent to the recording thereof; and if there are two or more such mortgages, they severally have preference according to the time of recording thereof, respectively.

§ 226. **Conveyances with intent to defraud purchasers and encumbrancers void.**—A conveyance of an estate or interest in real property, or the rents and profits thereof, and every charge thereon, made or created with intent to defraud prior or subsequent purchasers or encumbrancers, for a valuable consideration, of the same real property, rents or profits, is void as against such purchasers and encumbrancers. Such a conveyance or charge shall not be deemed fraudulent in favor of a subsequent purchaser or encumbrancer, who, at the time of his purchase or encumbrance, has actual or legal notice thereof, unless it appears that the grantee in the conveyance, or the person to be benefited by the charge, was privy to the fraud intended.

§ 227. **Conveyances with intent to defraud creditors void.**— A conveyance or assignment in writing or otherwise, of an estate, interest, or existing trust in real property, or the rents or profits issuing therefrom, or a charge on real property, or on the rents or profits thereof, made with the intent to hinder, delay or defraud creditors, or other persons, of their lawful suits, damages, forfeitures, debts or demands, or a bond or other evidence of debt given, suit commenced or decree or judgment suffered, with the like intent, is void as against every person so hindered, delayed or defrauded.

§ 228. **Conveyances void as to creditors, purchasers and encumbrancers, void as to heirs and assigns.**—A conveyance, charge, instrument or proceeding, declared by this article to be void as against creditors, purchasers or encumbrancers, is equally void as against their heirs, successors, personal representatives or assigns.

§ 229. **Fraudulent intent, question of fact.**— The question of fraudulent intent in a case arising under this article, shall be deemed a question of fact and not of law; and a conveyance or charge shall not be adjudged fraudulent as against creditors, purchasers or encumbrancers, solely on the ground that it was not founded on a valuable consideration.

§ 230. **Rights of purchaser or encumbrancer for valuable consideration protected.**— This article does not in any manner affect or impair the title of a purchaser or encumbrancer for a valuable consideration, unless it appears that he had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

§ 231. **Conveyances with power to revoke, determine or alter.** A conveyance of or charge on an estate or interest in real property, containing a provision for the revocation, determination or alteration of the estate or interest, or any part thereof, at the will of the grantor, is void, as against subsequent purchasers and encumbrancers, from the grantor, for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by the grantor, by virtue of the power reserved or expressed in the prior conveyance or charge. Where a power to revoke a conveyance of real property or the rents and profits

thereof, and to reconvey the same, is given to any person, other than the grantor in such conveyance, and such person thereafter conveys the same real property, rents or profits to a purchaser or encumbrancer for a valuable consideration, such subsequent conveyance is valid, in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared. If a conveyance to a purchaser or encumbrancer, under this section, be made before the person making it is entitled to execute his power of revocation, it is nevertheless valid, from the time the power of revocation actually vests in such person, in the same manner, and to the same extent, as if then made

§ 232. **Disaffirmance of fraudulent act by executor and others.** — An executor, administrator, receiver, assignee or other trustee, may, for the benefit of creditors, or of others interested in real property held in trust, disaffirm, treat as void and resist any act done or transfer or agreement made in fraud of the rights of any creditor, including himself, interested in such estate or property; and a person who fraudulently receives, takes, or in any manner interferes with the real property of a deceased person, or an insolvent corporation, association, partnership, or individual, is liable to such executor, administrator, receiver or other trustee for the same, or the value thereof, and for all damages caused by such act to the trust estate. A creditor of a deceased insolvent debtor, having a claim or demand exceeding one hundred dollars against such deceased, may, for the benefit of creditors or others interested in the real property of such deceased, disaffirm, treat as void, and resist any act done or conveyance, transfer or agreement made by such deceased in fraud of the rights of any creditor, including himself, and may maintain an action to set aside such act, conveyance, transfer or agreement, without having first obtained a judgment on such claim or demand; but the same, if disputed, may be established on the trial. The judgment in such action may provide for the sale of the premises or property involved, when a conveyance or transfer thereof is set aside, and that the proceeds thereof be brought into court or paid into the proper surrogate's court to be administered according to law.

§ 233. **When remainderman may pay interest owed by life tenant.**— Whenever real property held by any person for life is encumbered by mortgage or other lien, the interest on which should be paid by the life tenant, and such life tenant neglects or refuses to pay such interest, the remainderman may pay such interest, and recover the amount thereof, together with interest thereon from the time of such payment, of the life tenant.

§ 234. **Powers of courts of equity not abridged.**— Nothing contained in this article abridges the powers of courts of equity to compel the specific performance of agreements in cases of part performance.

ARTICLE VIII.

Recording Instruments Affecting Real Property.

Section 240. Definitions; effect of article.
241. Recording of conveyances.
242. By whom conveyance must be acknowledged or proved.
243. Recording of conveyances heretofore acknowledged or proved.
244. Recording executory contracts and powers of attorney.
245. Recording of letters patent.
246. Recording copies of instruments which are in secretary of state's office.
247. Certified copies may be recorded.
248. Acknowledgments and proofs within the state.
249. Acknowledgments and proofs in other states.
250. Acknowledgments and proofs in foreign countries.
251. Acknowledgments and proofs by married women.
252. Requisites of acknowledgments.
253. Proof by subscribing witness.
254. Compelling witnesses to testify.
255. Certificate of acknowledgment or proof.
256. When certificate to state time and place.
257. When certificate must be under seal.
258. Acknowledgment by corporation and form of certificate.
259. When county clerk's authentication necessary.

Section 260. When other authentication necessary.
261. Contents of certificate of authentication.
262. Recording of conveyances acknowledged or proved without the state, when parties and certifying officer are dead.
263. Proof where witnesses are dead.
264. Recording books.
265. Indexes.
266. Order of recording.
267. Certificate to be recorded.
268. Time of recording.
269. Certain deeds deemed mortgages.
270. Recording discharge of mortgage.
271. Effect of recording assignment of mortgage.
272. Recording of conveyances made by treasurer of Connecticut.
273. Revocation to be recorded.
274. Penalty for using long forms of covenants.
275. Certain acts not affected.
276. Actions to have certain instruments cancelled of record.
277. Officers guilty of malfeasance liable for damages.

§ 240. **Definitions; effect of article.**— The term "real property" as used in this article, includes lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years. The term "purchaser," includes every person to whom any estate or interest in real property is conveyed for a valuable consideration, and every assignee of a mortgage, lease or other conditional estate. The term "conveyance," includes every written instrument, by which any estate or interest in real property is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected, including an instrument in execution of a power, and although the power be one of revocation only; except a will, a lease for a term not exceeding three years, an executory contract for the sale or purchase of lands, and an instrument containing a power to convey real property as the agent or attorney for the owner of

such property. The term "recording officer," means the county clerk of the county, except in the counties of New York, Kings or Westchester, where it means the register of the county. This article does not apply to leases for life or lives, or for years, heretofore made, of lands in either of the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware or Schenectady.

§ 241. **Recording of conveyances.**—A conveyance of real property, within the state, on being duly acknowledged by the person executing the same, or proved as required by this chapter, and such acknowledgment or proof duly certified when required by this chapter, may be recorded in the office of the clerk of the county where such real property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser in good faith and for a valuable consideration, from the same vendor, his heirs or devisees, of the same real property or any portion thereof, whose conveyance is first duly recorded.

[L. 1896, chap. 572 amends section 1 of chapter 3 of part 2 of the Revised Statutes to read as follows:

"§1. Every conveyance of real estate, within this state, hereafter made, shall be recorded in the office of the clerk of the county where said real estate shall be situated, and such county clerk shall, upon the request of any party, on a tender of the lawful fees therefor, record the same in his said office; and every such conveyance not so recorded shall be void as against any subsequent purchaser, in good faith, and for a valuable consideration, of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded."

This amendatory act was signed by the Governor on the same day as the Real Property Law, which purports to repeal this section of the Revised Statutes amended as above. For the purposes of such amendment this section is not repealed by the Real Property Law. See Statutory Construction Law, § 33, ante, p. 119. This section 1 of the Revised Statutes, as so amended, is therefore probably to be deemed a later enactment than section 241 of the Real Property Law.]

§ 242. **By whom conveyance must be acknowledged or proved.**—Except as otherwise provided by this article, such acknowledgment can be made only by the person who executed the conveyance, and such proof can be made only by some other person, who was a witness of its execution, and at the same time subscribed his name to the conveyance as a witness.

§ 243. Recording of conveyances heretofore acknowledged or proved.— A conveyance of real property, within the state, heretofore executed, and heretofore acknowledged or proved, and certified, so as to be entitled to be read in evidence, or recorded, under the laws in force at the time when so acknowledged or proved, but which has not been recorded is entitled to be read in evidence, and recorded in the same manner, and with the like effect, as if this chapter had not been passed. If heretofore executed, but not proved or acknowledged, it may be proved or acknowledged in the same manner as conveyances hereafter executed and with like effect.

§ 244. Recording executory contracts and powers of attorney.— —An executory contract for the sale or purchase of real property, or an instrument containing a power to convey real property, as the agent or attorney for the owner of the property, acknowledged or proved, and certified, in the manner to entitle a conveyance to be recorded, may be recorded by the recording officer of any county in which any of the real property to which it relates is situated.

§ 245. Recording of letters patent.— Letters patent, issued under the great seal of the state, granting real property, may be recorded in the county where such property is situated, in the same manner and with like effect, as a conveyance duly acknowledged or proved and certified so as to entitle it to be recorded.

§ 246. Recording copies of instruments which are in secretary of state's office.— A copy of an instrument affecting real property, within the state, recorded or filed in the office of the secretary of state, certified in the manner required to entitle the same to be read in evidence, may be recorded with such certificate, in the office of any recording officer of the state.

§ 247. Certified copies may be recorded.— A copy of a record, or of any recorded instrument, certified or authenticated so as to be entitled to be read in evidence, may be again recorded in any office where the original would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of a conveyance or mortgage affecting separate parcels of real property situated in different counties, or of the record of such conveyance or mortgage in one of such counties,

certified or authenticated so as to be entitled to be read in evidence, may be recorded in any county in which any such parcel is situated, with the same effect as if the original instrument authenticated as required by section two hundred and fifty-nine of this chapter were so recorded.

§ 248. **Acknowledgments and proofs within the state.**—The acknowledgment or proof of a conveyance of real property within the state may be made at any place within the state, before a justice of the supreme court; or within the district wherein such officer is authorized to perform official duties, before a judge, clerk, deputy clerk, or special deputy clerk of a court, a notary public, or the mayor or recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge, or commissioner of deeds.

§ 249. **Acknowledgments and proofs in other states.**—The acknowledgment or proof of a conveyance of real property, within the state, may be made without the state, but within the United States, before either of the following officers acting within his jurisdiction, or of the court to which he belongs:

1. A judge of the supreme court, of the circuit court of appeals, of the circuit court, or of the district court of the United States.

2. A judge of the supreme, superior, or circuit court of a state.

3. A mayor of a city.

4. A commissioner appointed for the purpose by the governor of the state.

5. Any officer of a state, authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein.

§ 250. **Acknowledgments and proofs in foreign countries.**—The acknowledgment and proof of a conveyance of real property within the state, may be made without the United States before either of the following officers:

1. An ambassador, a minister plenipotentiary, minister extraordinary, minister resident, or charge des affairs of the United States, residing and accredited within the country.

2. A consul-general, vice-consul-general, deputy consul-general, vice-consul or deputy-consul, a consular or vice-consular

agent, or a consul or commercial or vice-commercial agent of the United States residing within the country.

3. A commissioner appointed for the purpose by the governor, and acting within his own jurisdiction.

4. A person specially authorized for that purpose by a commission, under the seal of the supreme court, issued to a reputable person, residing in or going to the country where the acknowledgment or proof is so to be taken.

5. If within the dominion of Canada, it may also be made before any judge of a court of record; or before any officer of such dominion authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein.

6. If within the United Kingdom of Great Britain and Ireland or the dominions thereunto belonging, it may also be made before the mayor, provost or other chief magistrate of a city or town therein.

§ 251. **Acknowledgments and proofs by married women.**— The acknowledgment or proof of a conveyance of real property, within the state, or of any other written instrument, may be made by a married woman the same as if unmarried.

§ 252. **Requisites of acknowledgments.**— An acknowledgment must not be taken by any officer unless he knows or has satisfactory evidence, that the person making it is the person described in and who executed such instrument.

§ 253. **Proof by subscribing witness.**— Where the execution of a conveyance is proved by a subscribing witness, such witness must state his own place of residence, and that he knew the person described in and who executed the conveyance. The proof must not be taken unless the officer is personally acquainted with such witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to the conveyance.

§ 254 **Compelling witnesses to testify.**— On the application of a grantee in a conveyance, his heir or personal representative, or a person claiming under either of them, verified by the oath of the applicant, stating that a witness to the conveyance, residing in the county where the application is made, refuses to appear and testify concerning its execution, and that such con-

veyance can not be proved without his testimony, any officer authorized to take, within the state, acknowledgment or proof of conveyance of real property may issue a subpoena, requiring such witness to attend and testify before him concerning the execution of the conveyance. A person who, on being duly served with such a subpoena, without reasonable cause refuses or neglects to attend or refuses to answer under oath concerning the execution of such conveyance, forfeits to the person injured one hundred dollars; and may also be committed to prison by the officer who issued the subpoena, there to remain without bail, and without the liberties of the jail, until he answers under oath as required by this section.

§ 255. **Certificate of acknowledgment or proof.**—An officer taking the acknowledgment or proof of a conveyance must indorse thereupon or attach thereto, a certificate, signed by himself, stating all the matters required to be done, known or proved on the taking of such acknowledgment or proof; together with the name and substance of the testimony of each witness examined before him, and if a subscribing witness, his place of residence.

§ 256. **When certificate to state time and place.**—Where the acknowledgment or proof is taken by a commissioner appointed by the governor, for a city or county within the United States, and without the state, the certificate must also state the day on which, and the town and county or the city in which the same was taken.

§ 257. **When certificate must be under seal.**—Where a certificate of acknowledgment or proof is made by a commissioner appointed by the governor, or by the mayor or other chief magistrate of a city or town without the United States, or by a minister, charges des affairs, consul-general, vice-consul-general, deputy consul-general, vice-consul or deputy-consul, consular or vice-consular agent, or consul or commercial or vice-commercial agent, of the United States, it must be under his seal of office, or the seal of the consulate to which he is attached. All acknowledgments or proofs of deeds, mortgages or other instruments relating to real property, the certificates of which were made in the form required by the laws of this state, by a

consul-general, vice-consul-general, deputy consul-general, vice-consul, deputy-consul, consular agent, vice-consular agent, consul or commercial agent or vice-commercial agent of the United States prior to the first day of April, eighteen hundred and ninety-six, are confirmed.

§ 258. **Acknowledgment by corporation and form of certificate.**— The acknowledgment of a conveyance or other instrument by a corporation, must be made by some officer thereof authorized to execute the same by the board of directors of said corporation. The certificate of acknowledgment must be in substantially the following form, the blanks being properly filled.

State of New York,
County of ....., } *ss.:*

On the .....day of.....in the the year....., before me personally came.....to me known, who, being by me duly sworn, did depose and say that he resided in .....; that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(Signature and office of officer taking acknowledgment.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

§ 259. **When county clerk's authentication necessary.**— A certificate of acknowledgment or proof, made within the state, by a commissioner of deeds, justice of the peace, or, except as otherwise provided by law, by a notary public, does not entitle the conveyance to be read in evidence or recorded, except within the county in which the officer resides at the time of making such certificate, unless authenticated by a certificate of the clerk of the same county. But this section does not apply to a conveyance executed by an agent for the Holland Land company, or of the Pulteney estate, lawfully authorized to convey real property.

§ 260. **When other authentication necessary.**— In the following cases a certificate of acknowledgment or proof is not entitled to be read in evidence or recorded unless authenticated by the following officers, respectively:

1. Where the original certificate of acknowledgment or proof is made by a commissioner appointed by the governor, by the secretary of state.

2. Where made by a judge of a court of record in Canada, by the clerk of the court.

3. Where made by the officer of a state of the United States, or of the dominion of Canada authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, by the secretary of state of the state, or the clerk, register, recorder or prothonotary of the county in which the officer making the original certificate resided, when the certificate was made, or by the clerk of any court of that county, having by law a seal.

§ 261. **Contents of certificate of authentication.**— An officer authenticating a certificate of acknowledgment or proof must subjoin or attach to the original certificate a certificate under his hand, and if he has, pursuant to law, an official seal, under such seal. Except when the original certificate is made by a judge of a court of record in Canada, such certificate of authentication must specify that, at the time of taking the acknowledgment or proof, the officer taking it was duly authorized to take the same; that the authenticating officer is acquainted with the former's handwriting, or has compared the signature to the original certificate with that deposited in his office by such officer; and that he verily believes the signature to the original certificate is gunuine; and if the original certificate is required to be under seal, he must also certify that he has compared the impression of the seal affixed thereto with the impression of the seal of the officer who took the acknowledgment or proof deposited in his office, and that he verily believes the impression of the seal upon the original certificate is gunuine. A clerk's certificate authenticating a certificate of acknowledgment or proof, taken before a judge of a court of record in Canada, must specify that there is such a court; that the judge before whom the acknowledgment of proof was taken, was, when

it was taken, a judge thereof; that such court has a seal; that the officer authenticating is clerk thereof; that he is well acquainted with the handwriting of such judge, and verily believes his signature is genuine.

§ 262. **Recording of conveyances acknowledged or proved without the state, where parties and certifying officer are dead.**—Where the execution of a conveyance of real property within this state is acknowledged or proved according to the laws of any other state of the United States, and a certificate of the acknowledgment or proof signed by the officer taking it is annexed to or indorsed upon the instrument, if such officer and the grantor or mortgagor be dead and the death of all of them be proved by affidavit, sworn to in such state before an officer authorized by its laws to administer an oath therein, the conveyance, with the affidavit or affidavits annexed thereto, on being authenticated as required by this section, may be read in evidence and recorded in the same manner, and with like effect, as if the conveyance was acknowledged or proved and certified as required by the laws of this state. To entitle such conveyance and affidavits to be read in evidence, or recorded, a certificate of the clerk, recorder, register or prothonotary of the county in which the deceased officer resided, authenticating his signature, and also certifying that the conveyance is acknowledged or proved in all respects, as required by the laws of such state, must be annexed to the original certificate; and a like certificate of such clerk, recorder, register or prothonotary, authenticating the signature of the officer, before whom the affidavits proving the deaths were taken, must be annexed to such affidavits. The affidavits on being recorded, are presumptive evidence of the matters of fact, required to be stated therein.

§ 263. **Proof where witnesses are dead.**—Where the witnesses to a conveyance, authorized to be recorded, are dead, its execution may be proved before any officer authorized to take within the state the acknowledgment and proof of conveyances, other than a commissioner of deeds, a notary public, or a justice of the peace. The proof of the execution must be made by satisfactory evidence of the death of all the witnesses thereto, and of the handwriting of such witnesses, or any one of them, and of the grantor, which evidence, with the name and residence of

each witness examined, must be set forth by the officer taking the same, in his certificate of proof. A conveyance so proved, and certified, may be recorded in the proper office, if the original conveyance be at the same time deposited in the same office, there to remain for the inspection of all persons desiring to examine the same. If the conveyance affects real property in two or more counties, a certified copy of the conveyance, with the proof and certificates, may be recorded in each of such counties. Such recording and deposit are constructive notice of the execution of such conveyance to all purchasers of the same real property, or any part thereof, from the same vendor, his heirs or assigns, subsequent to such recording, but do not entitle the conveyance or the record thereof, or a transcript of the record to be read in evidence.

§ 264. **Recording books.**—Different sets of books must be provided by the recording officer of each county, for the recording of deeds and mortgages; in one of which sets, he must record all conveyances and other instruments absolute in their terms delivered to him, pursuant to law, to be so recorded, which are not intended as mortgages, or securities in the nature of mortgages, and in the other set, such mortgages and securities delivered to him.

§ 265. **Indexes.**—Each recording officer must provide, at the expense of his county, proper books for making general indexes of instruments recorded in his office, and must form indexes therein, so as to afford correct and easy reference to the books of record in his office. There must be one set of indexes for mortgages or securities in the nature of mortgages, and another set for conveyances and other instruments not intended as such mortgages or securities. Each set must contain two lists in alphabetical order, one consisting of the names of the grantors or mortgagors, followed by the names of their grantees or mortgagees, and the other list consisting of the names of the grantees or mortgagees, followed by the names of their grantors or mortgagors, with proper blanks in each class of names, for subsequent entries, which entries must be made as instruments are delivered for record. This section, so far as relates to the preparation of new indexes, shall not apply to a county where the re-

cording officer now has general numerical indexes. A recording officer who records a conveyance of real property, sold by virtue of an execution, or by a sheriff, referee or other person, pursuant to a judgment, the granting clause whereof states whose right, title or interest was sold, must insert in the proper index, under the head "grantors," the name of the officer executing the conveyance, and of each person whose right, title or interest is so stated to have been sold.

§ 266. **Order of recording.**— Every instrument, entitled to be recorded, must be recorded by the recording officer in the order and as of the time of its delivery to him therefor, and is considered recorded from the time of such delivery.

§ 267. **Certificate to be recorded.**— The certificate of the acknowledgment or proof of the execution of an instrument, and the certificate authenticating the signature or seal of the officer so certifying, or both, if required, must be recorded together with the instrument so acknowledged or proved; otherwise neither the record of the instrument nor a transcript thereof can be read in evidence.

§ 268. **Time of recording.**— The recording officer must make an entry in the record, immediately after the copy of every instrument recorded by him, stating the hour, day, month and year, when it was recorded, and must indorse upon every such instrument a certificate, stating the time as aforesaid, when, and the book and page where, the same was recorded.

§ 269. **Certain deeds deemed mortgages.**– A deed conveying real property, which, by any other written instrument, appears to be intended only as a security in the nature of a mortgage, although an absolute conveyance in terms, must be considered a mortgage; and the person for whose benefit such deed is made, derives no advantage from the recording thereof, unless every writing, operating as a defeasance of the same, or explanatory of its being desired to have the effect only of a mortgage, or conditional deed, is also recorded therewith, and at the same time.

§ 270. **Recording discharge of mortgage.**— A mortgage, registered or recorded, must be discharged upon the record thereof, by the recording officer, when there is presented to him a certificate signed by the mortgagee, his personal representative or

assignee, and acknowledged or proved, and certified, in like manner as to entitle a conveyance to be recorded, specifying that the mortgage has been paid, or otherwise satisfied and discharged. The certificate of discharge, and the certificates of its acknowledgment or proof, must be recorded; and a reference must be made to the book and page containing such record, in the minute of the discharge of such mortgage, made by the officer upon the record thereof.

§ 271. **Effect of recording assignment of mortgage.**— The recording of an assignment of a mortgage is not in itself, a notice of such assignment to a mortgagor, his heirs or personal representatives, so as to invalidate a payment made by either of them to the mortgagee.

§ 272. **Recording of conveyances made by treasurer of Connecticut.**— A conveyance of real property, executed at any time since the tenth day of March, eighteen hundred and twenty-five, by the treasurer of the state of Connecticut, acknowledged by him before the secretary of state of such state, and the acknowledgment of which is certified by such secretary of state under the seal of such state, in the manner required for the acknowledgment and certification of a conveyance within this state, may be recorded in the proper office within this state, without further proof thereof.

§ 273. **Revocation to be recorded.**— A power of attorney or other instrument, recorded pursuant to this article, is not deemed revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

§ 274. **Penalty for using long forms of covenants.**— The recording officer of any county may charge for the recording of an instrument containing any of the covenants mentioned in sections two hundred and eighteen and two hundred and nineteen of this chapter, at large, instead of the short forms thereof, in said sections contained, the sum of five dollars in addition to the fees chargeable by law for such recording.

§ 275. **Certain acts not affected.**— Nothing contained in this article repeals or affects any act providing for recording and

indexing instruments affecting real property in the city of New York, according to city blocks or other limited areas.

§ 276. **Actions to have certain instruments cancelled of record.**—An owner of real property or of any undivided part thereof or interest therein, may maintain an action to have any recorded instrument in writing relating to the same, other than those required by law to be recorded, declared void or invalid, or to have the same cancelled of record as to said real property, or his undivided part thereof or interest therein.

§ 277. **Officers guilty of malfeasance liable for damages.**—An officer authorized to take the acknowledgment or proof of a conveyance or other instrument, or to certify such proof or acknowledgment, or to record the same, who is guilty of malfeasance or fraudulent practice in the execution of any duty prescribed by law in relation thereto, is liable in damages to the person injured.

ARTICLE IX.

The Descent of Real Property.

Section 280. Definitions and use of terms; effect of article.
281. General rule of descent.
282. Lineal descendants of equal degree.
283. Lineal descendants of unequal degree.
284. When father inherits.
285. When mother inherits.
286. When collateral relatives inherit; collateral relatives of equal degrees.
287. Brothers and sisters and their descendants.
288. Brothers and sisters of father and mother and their descendants.
289. Illegitimate children.
290. Relatives of the half-blood.
291. Cases not hereinbefore provided for.
292. Posthumous children and relatives.
293. Inheritance, sole or in common.
294. Alienism of ancestor.
295. Advancements.
296. How advancements adjusted.

§ 280. **Definitions and use of terms; effect of article.**—The term "real property" as used in this article, includes every

estate, interest and right, legal and equitable in lands, tenements and hereditaments except such as are determined or extinguished by the death of an intestate seized or possessed thereof, or in any manner entitled thereto; leases for years, estates for the life of another person; and real property held in trust, not devised by the beneficiary. "Inheritance" means real property as herein defined, descended according to the provisions of this article; the expressions "where the inheritance shall have come to the intestate on the part of the father" or "mother," as the case may be, include every case where the inheritance shall have come to the intestate by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent. When in this article a person is described as living, it means living at the time of the death of the intestate from whom the descent came; when he is described as having died, it means that he died before such intestate. This article does not affect a limitation of an estate by deed or will, or tenancy by the curtesy or dower.

§ 281. **General rule of descent.**— The real property of a person who dies without devising the same shall descend:

1. To his lineal descendants.
2. To his father.
3. To his mother; and
4. To his collateral relatives,

as prescribed in the following sections of this article.

§ 282. **Lineal descendants of equal degree.**— If the intestate leave descendants in the direct line of lineal descent, all of equal degree of consanguinity to him, the inheritance shall descend to them in equal parts however remote from him the common degree of consanguinity may be.

§ 283. **Lineal descendants of unequal degree.**—If any of the descendants of such intestate be living, and any be dead, the inheritance shall descend to the living, and the descendants of the dead, so that each living descendant shall inherit such share as would have descended to him had all the descendants in the same degree of consanguinity who shall have died leaving issue been living; and so that issue of the descendants who shall have died shall respectively take the shares which their ancestors would have received.

§ 284. **When father inherits.** If the intestate die without lawful descendants, and leave a father, the inheritance shall go to such father, unless the inheritance came to the intestate on the part of his mother, and she be living; if she be dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided; if there be no such brothers or sisters or their descendants living, such inheritance shall descend to the father in fee.

§ 285. **When mother inherits.**— If the intestate die without descendants and leave no father, or leave a father not entitled to take the inheritance under the last section, and leave a mother, and a brother or sister, or the descendant of a brother or sister, the inheritance shall descend to the mother for life, and the reversion to such brothers and sisters of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance hereinafter provided. If the intestate in such case leave no brother or sister or descendant thereof, the inheritance shall descend to the mother in fee.

§ 286. **When collateral relatives inherit; collateral relatives of equal degrees.**—If there be no father or mother capable of inheriting the estate, it shall descend in the cases hereinafter specified to the collateral relatives of the intestate; and if there be several such relatives, all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from him the common degree of consanguinity may be.

§ 287. **Brothers and sisters and their descendants.**—If all the brothers and sisters of the intestate be living, the inheritance shall descend to them; if any of them be living and any be dead, to the brothers and sisters living, and the descendants, in whatever degree, of those dead; so that each living brother or sister shall inherit such share as would have descended to him or her if all the brothers and sisters of the intestate who shall have died, leaving issue, had been living, and so that such descendants in whatever degree shall collectively inherit the share which their parent would have received if living; and the same rule shall prevail as to all direct lineal descendants of every brother

and sister of the intestate whenever such descendants are of unequal degrees.

§ 288. **Brothers and sisters of father and mother and their descendants.**— If there be no heir entitled to take, under either of the preceding sections, the inheritance, if it shall have come to the intestate on the part of his father, shall descend:

1. To the brothers and sisters of the father of the intestate in equal shares, if all be living:

2. If any be living, and any shall have died, leaving issue, to such brothers and sisters as shall be living and to the descendants of such as shall have died.

3. If all such brothers and sisters shall have died, to their descendants.

4. If there be no such brothers or sisters of such father, nor any descendants of such brothers or sisters, to the brothers and sisters of the mother of the intestate, and to the descendants of such as shall have died, or if all have died, to their descendants. But, if the inheritance shall have come to the intestate on the part of his mother, it shall descend to her brothers and sisters and their descendants; and if there be none, to the brothers and sisters of the father and their descendants, in the manner aforesaid. If the inheritance has not come to the intestate on the part of either father or mother, it shall descend to the brothers and sisters both of the father and mother of the intestate, and their descendants in the same manner. In all cases mentioned in this section the inheritance shall descend to the brothers and sisters of the intestate's father or mother, as the case may be, or to their descendants in like manner as if they had been the brothers and sisters of the intestate.

§ 289. **Illegitimate children.**— If an intestate who shall have been illegitimate die without lawful issue, or illegitimate issue entitled to take, under this section, the inheritance shall descend to his mother; if she be dead, to his relatives on her part, as if he had been legitimate. If a woman die without lawful issue, leaving an illegitimate child, the inheritance shall descend to him as if he were legitimate. In any other case illegitimate children or relatives shall not inherit.

§ 290. **Relatives of the half-blood.**– Relatives of the half-blood and their descendants, shall inherit equally with those of the

whole blood and their descendants, in the same degree, unless the inheritance came to the intestate by descent, devise or gift from an ancestor; in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

§ 291. **Cases not hereinbefore provided for.**— In all cases not provided for by the preceding sections of this article, the inheritance shall descend according to the course of the common law.

§ 292. **Posthumous children and relatives.**— A descendant or a relative of the intestate begotten before his death, but born thereafter, shall inherit in the same manner as if he had been born in the lifetime of the intestate and had survived him.

§ 293. **Inheritance, sole or in common.**— When there is but one person entitled to inherit, he shall take and hold the inheritance solely; when an inheritance or a share of an inheritance descends to several persons they shall take as tenants in common, in proportion to their respective rights.

§ 294. **Alienism of ancestor.**— A person capable of inheriting under the provisions of this article, shall not be precluded from such inheritance by reason of the alienism of an ancestor.

§ 295. **Advancements.**— If a child of an intestate shall have been advanced by him, by settlement or portion, real or personal property, the value thereof must be reckoned for the purposes of descent and distribution as part of the real and personal property of the intestate descendible to his heirs and to be distributed to his next of kin; and if such advancement be equal to or greater than the amount of the share which such child would be entitled to receive of the estate of the deceased, such child and his descendants shall not share in the estate of the intestate; but if it be less than such share, such child and his descendants shall receive so much, only, of the personal property, and inherit so much only, of the real property, of the intestate, as shall be sufficient to make all the shares of all the children in the whole property, including the advancement, equal. The value of any real or personal property so advanced, shall be deemed to be that, if any, which was acknowledged by the child by an instrument in writing; otherwise it must be estimated according to the worth of the property when given. Maintaining or educating a child, or giving him money without

a view to a portion or settlement in life is not an advancement. An estate or interest given by a parent to a descendant by virtue of a beneficial power, or of a power in trust, with a right of selection, is an advancement.

§ 296. **How advancements adjusted.**—When an advancement to be adjusted consisted of real property, the adjustment must be made out of the real property descendible to the heirs. When it consisted of personal property, the adjustment must be made out of the surplus of the personal property to be distributed to the next of kin. If either species of property is insufficient to enable the adjustment to be fully made, the deficiency must be adjusted out of the other.

ARTICLE X.

Laws Repealed; When to Take Effect.

Section 300. Laws repealed.
301. When to take effect.

Section 300. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 301. **When to take effect.**—This chapter shall take effect on October 1, 1896.

SCHEDULE OF LAWS REPEALED.

Revised Statutes, part II, chapters 1, 2, 3...	All, except §§ 5, 6, 7 of tit. I of ch. 1, and § 63, tit. II, ch. 1.
Revised Statutes, part II, chapter 7, title I..	All.

LAWS OF—	Chapter.	Sections.
1798.....	72.....	All.
1802.....	49.....	All.
1804.....	109.....	26.
1805.....	25.....	All.
1807.....	123.....	2.
1808.....	175.....	All.

LAWS OF—	Chapter	Section.
1819	25	All.
1829	222	All.
1830	171	All.
1834	272	All.
1835	275	All.
1839	295	5.
1843	87	All.
1843	199	All.
1843	210	5.
1845	109	All.
1845	110	All.
1845	115	All.
1848	195	All.
1855	547	All.
1857	576	All.
1858	259	All.
1860	322	All.
1860	345	All.
1860	396	All.
1863	246	All.
1865	421	All.
1868	513	All.
1870	208	All.
1872	120	All.
1872	141	All.
1872	358	All.
1874	261	All.
1875	38	All.
1875	336	All.
1875	545	All.
1877	111	All.
1879	249	All.
1880	300	All.
1880	115	All.
1880	530	All.
1882	275	All.
1883	80	All.
1884	26	All.
1884	257	All

L. 1896, ch. 547. Ch. 46, G. L.

LAWS OF —	Chapter.	Section.
1888	246	All.
1889	42	All.
1890	61	All.
1890	475	All.
1891	100	All.
1891	172	All.
1891	209	All.
1892	208	All.
1892	616	All.
1893	123	All.
1893	182	All.
1893	207	All.
1893	599	All.
1894	315	All.
1894	729	All.
1895	525	All.
1895	886	All.

THE DOMESTIC RELATIONS LAW,

As amended to the commencement of the session of 1897.

L. 1896, ch. 272 — An act relating to the domestic relations, constituting chapter forty-eight of the general laws.

[Became a law April 17, 1896, taking effect October 1. 1896.]

CHAPTER XLVIII OF THE GENERAL LAWS.

The Domestic Relations Law.

Article 1. Unlawful marriages. (§§ 1-4.)
2. Solemnization, proof and effect of marriage. (§§ 10-16.)
3. Certain rights and liabilities of husband and wife. (§§ 20-29.)
4. The custody and wages of children. (§§ 40-42.)
5. Guardians. (§§ 50-54.)
6. The adoption of children. (§§ 60-68.)
7. Apprentices and servants. (§§ 70-77.)
8. Laws repealed; when to take effect. (§§ 90-91.)

ARTICLE I.

Unlawful Marriages.

Section 1. Short title; definitions.
2. Incestuous and void marriages.
3. Void marriages.
4. Voidable marriages.

Section 1. **Short title; definitions.**— This chapter shall be known as the domestic relations law. A minor is a person under the age of twenty-one years. A minor reaches majority at that age.

§ 2. **Incestuous and void marriages.**—A marriage is incestuous and void whether the relatives are legitimate or illegitimate between, either:

1. An ancestor and a descendant, or,

2. A brother and sister of either the whole or the half blood.

3. An uncle and niece or an aunt and nephew.

§ 3. **Void marriages.**—A marriage is absolutely void if contracted by a person whose husband or wife by a former marriage is living, unless either:

1. Such former marriage has been annulled or has been dissolved for a cause other than the adultery of such person;

2. Such former husband or wife has been finally sentenced to imprisonment for life;

3. Such former husband or wife has absented himself or herself for five successive years then last past without being known to such person to be living during that time.

§ 4. **Voidable marriages.**— A marriage is void from the time its nullity is declared by a court of competent jurisdiction if either party thereto:

1. Is under the age of legal consent, which is eighteen years,

2. Is incapable of consenting to a marriage for want of understanding,

3. Is incapable of entering into the married state from physical cause,

4. Consents to such marriage by reason of force, duress, or fraud; or,

5. Has a husband or a wife by a former marriage living, and such former husband or wife has absented himself or herself for

five successive years then last past without being known to such party to be living during that time.

Actions to annul a void or voidable marriage may be brought only as provided in the code of civil procedure.

ARTICLE II.

Solemnization, Proof and Effect of Marriage.

Section 10. Marriage a civil contract; effect of this article.
11. Who may solemnize marriage.
12. Marriage, how solemnized.
13. Duty of clergyman or magistrate.
14. Certificate.
15. Filing and entry of certificate.
16. Certificate, entry and copies evidence.
17. Fees.
18. Effect of marriage of parents on illegitimates.

§ 10. Marriage a civil contract; effect of this article.— Marriage, so far as its validity in law is concerned, continues to be a civil contract, to which the consent of parties, capable in law of making a contract, is essential. This article does not require any marriage to be solemnized in the manner herein specified, and a lawful marriage contracted in the manner heretofore in use in this state, or in the manner and pursuant to the regulations of a religious society to which either party belongs, is as valid as if this article had not been enacted.

§ 11. Who may solemnize marriage.— For the purpose of being registered and authenticated as prescribed by this article, a marriage must be solemnized by either:

1. A clergyman or minister of any religion, or the leader of the society for ethical culture in the city of New York;

2. A mayor, recorder, alderman, police justice or police magistrate of a city; or,

3. A justice or judge of a court of record, or of a municipal court, a justice of the peace, or a justice of a district court in the cities of New York and Brooklyn.

The word "clergyman," when used in the following sections of this article, includes any person referred to in the first sub-

division of this section; the word "magistrate," when so used, includes any person referred to in the second or third subdivision.

§ 12. **Marriage, how solemnized.**—No particular form or ceremony is required when a marriage is solemnized as herein provided, by a clergyman or magistrate, but the parties must solemnly declare in the presence of the clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife. In every case, at least one witness besides the clergyman or magistrate must be present at the ceremony.

§ 13. **Duty of clergyman or magistrate.**—A clergyman or magistrate requested to solemnize a marriage must, before solemnizing it, ascertain:

1. The name and residence of each party.

2. That each party is of sufficient age to be capable in law of contracting marriage.

3. The name and residence of the attending witness, or, if more than one are present, of at least two attending witnesses.

Unless such facts are personally known to him, he must require them to be proved and for that purpose may administer an oath to and examine either or both of the parties or any other person. Each examination so taken must be reduced to writing, subscribed by the person examined, and entered in a book kept by the clergyman or magistrate for that purpose; in which he must also enter each fact required to be ascertained by this section which is within his knowledge, and the day on which the marriage is solemnized.

§ 14. **Certificate.**—A clergyman or magistrate by whom a marriage is solemnized must furnish to either party, on request, a certificate, signed by him, stating:

1. The name and place of residence of each of the parties; that they were known to him, or had satisfactorily proved by their oaths or the oath of a person known to him, that they were the persons described in the certificate and that they had attained the age of legal consent.

2. The name and place of residence of the attending witness; or, if more than one is present, of at least two attending witnesses.

3. The time and place of the marriage.

4. That after due inquiry made, there appeared to be no legal impediment to the marriage.

§ 15. **Filing and entry of certificate.**— On the presentation of such certificate signed by such magistrate or clergyman, within six months after the marriage, to the clerk of the city or town in which the marriage was solemnized, or in which either party resided at the time of the marriage or resides when the certificate is presented, such clerk must file in his office and enter in a book kept by him for that purpose in the alphabetical order of the initial letter of the surname of each party and in the order of time in which the certificate is filed:

1. The names and places of residence of the persons married.

2. The time and place of marriage.

3. The name and official station of the person signing the certificate.

4. The date of filing the certificate.

§ 16. **Certificate, entry and copies evidence.**— Such certificate or entry, or a copy of either certified by the officer with whom such certificate is filed, is presumptive evidence of the marriage.

§ 17. **Fees.**— Fees for services rendered under this chapter may be collected as follows:

For solemnizing a marriage including the certificate thereof, one dollar.

For administering an oath and taking an examination as prescribed in section thirteen, fifty cents for each person examined.

For filing and entering a certificate, twenty-five cents.

For a certified copy of a certificate or entry, ten cents.

§ 18. **Effect of marriage of parents on illegitimates.**—An illegitimate child whose parents have heretofore intermarried, or shall hereafter intermarry, shall thereby become legitimatized and shall be considered legitimate for all purposes, entitled to all the rights and privileges of a legitimate child; but an estate or interest vested before the marriage of the parents of such child shall not be divested or affected by reason of such child being legitimatized.

ARTICLE III.

Certain Rights and Liabilities of Husband and Wife.

Section 20. Property of married woman.

21. Powers of married women.

22. Insurance of husband's life.

23. Contracts in contemplation of marriage.

Section 24. Liability of husband for ante-nuptial debts.
25. Contract of married woman not to bind husband.
26. Husband and wife may convey to each other or make partition.
27. Rights of action by and against married woman for torts.
28. Pardon not to restore to marital rights.
29. Compelling transfer of trust property.

Section 20. **Property of married woman.**—Property, real or personal, now owned by a married woman, or hereafter owned by a woman at the time of her marriage, or acquired by her as prescribed in this chapter, and the rents, issues, proceeds and profits thereof, continues to be her sole and separate property as if she were unmarried, and is not subject to her husband's control or disposal nor liable for his debts.

§ 21. **Powers of married woman.**—A married woman has all the rights in respect to property, real or personal, and the acquisition, use, enjoyment and disposition thereof, and to make contracts in respect thereto with any person including her husband, and to carry on any business, trade or occupation, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried; but a husband and wife can not contract to alter or dissolve the marriage or to relieve the husband from his liability to support his wife.

§ 22. **Insurance of husband's life.**—A married woman may, in her own name, or in the name of a third person, with his consent, as her trustee, cause the life of her husband to be insured for a definite period, or for the term of his natural life. Where a married woman survives such period or term she is entitled to receive the insurance money, payable by the terms of the policy, as her separate property, and free from any claim of a creditor or representative of her husband, except, that where the premium actually paid annually out of the husband's property exceeds five hundred dollars, that portion of the insurance money which is purchased by excess of premium above five hundred dollars, is primarily liable for the husband's debts. The policy may provide that the insurance, if the married woman dies before it becomes due and without disposing of it, shall be paid to her

husband or to his, her or their children, or to or for the use of one or more of those persons; and it may designate one or more trustees for a child or children to receive and manage such money until such child or children attain full age. The married woman may dispose of such policy by will or written acknowledged assignment to take effect on her death, if she dies thereafter leaving no descendant surviving. After the will or the assignment takes effect, the legatee or assignee takes such policy absolutely.

A policy of insurance on the life of any person for the benefit of a married woman, is also assignable and may be surrendered to the company issuing the same, by her, or her legal representative, with the written consent of the assured.

§ 23. **Contracts in contemplation of marriage.**—A contract made between persons in contemplation of marriage, remains in full force after the marriage takes place.

§ 24. **Liability of husband for ante-nuptial debts.**—A husband who acquires property of his wife by ante-nuptial contract or otherwise, is liable for her debts contracted before marriage, but only to the extent of the property so acquired.

§ 25. **Contract of married woman not to bind husband.**—A contract made by a married woman does not bind her husband or his property.

§ 26. **Husband and wife may convey to each other or make partition.**— Husband and wife may convey or transfer real or personal property directly, the one to the other, without the intervention of a third person; and may make partition or division of any real property held by them as tenants in common, joint tenants or tenants by the entireties. If so expressed in the instrument of partition or division such instrument bars the wife's right to dower in such property, and also, if so expressed, the husband's tenancy by curtesy.

§ 27. **Right of action by or against married woman for torts.** A married woman has a right of action for an injury to her person, property or character or for an injury arising out of the marital relation, as if unmarried. She is liable for her wrongful or tortious acts; her husband is not liable for such acts unless they were done by his actual coercion or instigation; and such coercion or instigation shall not be presumed but must be proved. This section does not affect any right, cause of action or defense existing before the eighteenth day of March, 1890.

§ 28. **Pardon not to restore marital rights.**—A pardon granted to a person sentenced to imprisonment for life within this state, does not restore that person to the rights of a previous marriage or to the guardianship of a child, the issue of such a marriage.

§ 29. **Compelling transfer of trust property.**—A person who holds property as trustee of a married woman, under a deed of conveyance or otherwise, on the written request of such married woman, accompanied by a certificate of a justice of the supreme court, that he has examined the condition and situation of the property, and made inquiry into the capacity of such married woman to manage and control the same, may convey to such married woman all or any portion of such property, or the rents, issues or profits thereof.

ARTICLE IV.

The Custody and Wages of Children.

Section 40. Habeas corpus for child detained by parent.
41. Habeas corpus for child detained by Shakers.
42. Payment of wages to minor; when valid.

Section 40. **Habeas corpus for child detained by parent.**—A husband or wife, being an inhabitant of this state, living in a state of separation, without being divorced, who has a minor child, may apply to the supreme court for a writ of habeas corpus to have such minor child brought before such court; and on the return thereof, the court, on due consideration, may award the charge and custody of such child to either parent for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and may at any time thereafter vacate or modify such order.

§ 41. **Habeas corpus for child detained by Shakers.**—If it shall appear on such application, or the return of the writ, that the husband or wife of the applicant has become attached to the society of Shakers, and detains a child of the marriage among them, and that such child is secreted or concealed among them, the court may issue a warrant in aid of such writ of habeas corpus, directed to the sheriff of the county where the child is suspected to be, commanding such sheriff, in the day time, to

search the dwelling-houses and other buildings of such society, or of any members thereof, or any other building specified in the warrant, for such child, and to bring him before the court, and the sheriff must forthwith execute such warrant.

§ 42. **Payment of wages to minor; when valid.**—Where a minor is in the employment of a person other than his parent or guardian, payment to such minor of his wages is valid, unless such parent or guardian notify the employer in writing, within thirty days after the commencement of such service, that such wages are claimed by such parent or guardian, but whenever such notice is given at any time payments to the minor shall not be valid for services rendered thereafter.

ARTICLE V.

Guardians.

Section 50. Guardians in socage.
51. Appointment of guardians by parent.
52. Powers and duties of such guardians.
53. Duties and liabilities of all general guardians.
54. Guardianship of married woman.

Section 50. **Guardians in socage.**—Where a minor for whom a general guardian of the property has not been appointed shall acquire real property, the guardianship of his property with the rights, powers and duties of a guardian in socage belongs:

1. To the father;

2. If there be no father, to the mother;

3. If there be no father or mother, to the nearest and eldest relative of full age, not under any legal incapacity; and as between relatives of the same degree of consanguinity, males shall be preferred.

The rights and authority of every such guardian shall be superseded by a testamentary or other guardian appointed in pursuance of this article.

§ 51. **Appointment of guardians by parent.**— A married woman is the joint guardian of her children with her husband, with equal powers, rights and duties in regard to them. Upon the death of either father or mother, the surviving parent, whether of full age or a minor, of a child likely to be born, or of any living child,

under the age of twenty-one years and unmarried, may, by deed or last will, duly executed, dispose of the custody and tuition of such child during its minority or for any less time, to any person or persons.

A person appointed guardian in pursuance to this section shall not exercise the power or authority thereof unless such will is admitted to probate, or such deed executed and recorded as provided by section twenty-eight hundred and fifty-one of the code of civil procedure.

§ 52. **Powers and duties of such guardian.**— Every such disposition from the time it takes effect, shall vest in the person to whom made, if he accepts the appointment, all the rights and powers, and subject him to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody and tuition of such minor, as guardian in socage or otherwise. He may take the custody and charge of the tuition of such minor, and may maintain all proper actions for the wrongful taking or detention of the minor, and shall recover damages in such actions for the benefit of his ward. He shall also take the custody and management of the personal estate of such minor and the profits of his real estate, during the time for which such disposition shall have been made, and may bring such actions in relation thereto as a guardian in socage might by law.

§ 53. **Duties and liabilities of all general guardians.**—A general guardian or guardian in socage shall safely keep the property of his ward that shall come into his custody, and shall not make or suffer any waste, sale or destruction of such property or inheritance, but shall keep in repair and maintain the houses, gardens and other appurtenances to the lands of his ward, by and with the issues and profits thereof, or with such other moneys belonging to his ward as shall be in his possession; and shall deliver the same to his ward, when he comes to full age, in at least as good condition as such guardian received the same, inevitable decay and injury only excepted; and shall answer to his ward for the issues and profits of the real estate, received by him, by a lawful account.

If any guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, he shall lose the custody

of the same, and of such ward, and shall forfeit to the ward treble damages.

§ 54. **Guardianship of married woman.**— The lawful marriage of a woman before she attains her majority terminates a general guardianship with respect to her person, but not with respect to her property.

ARTICLE VI.

The Adoption of Children.

Section 60. Definitions; effect of article.
61. Whose consent necessary.
62. Requisition of voluntary adoption.
63. Order.
64. Effect of adoption.
65. Adoptions from charitable institutions.
66. Abrogation of voluntary adoption.
67. Application in behalf of child for abrogation of an adoption from a charitable institution.
68. Application by a foster parent for the abrogation of such an adoption.

Section 60. **Definitions; effect of article.**—Adoption is the legal act whereby an adult takes a minor into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect to such minor. Hereafter, in this article, the person adopting is designated the "foster parent." A voluntary adoption is any other than that of an indigent child, or one who is a public charge from an orphan asylum or charitable institution.

An adult unmarried person, or an adult husband or wife, or an adult husband and his adult wife together, may adopt a minor in pursuance of this article, and a child shall not hereafter be adopted except in pursuance thereof. Proof of the lawful adoption of a minor heretofore made may be received in evidence, and any such adoption shall not be abrogated by the enactment of this chapter and shall have the effect of an adoption hereunder. Nothing in this article in regard to an adopted child inheriting from the foster parent, applies to any will, devise or trust made or created before June twenty-fifth, eighteen hundred and

seventy-three, or alters, changes or interferes with such will, devise or trust, and as to any such will, devise or trust, a child adopted before that date is not an heir so as to alter estates or trusts, or devises in wills so made or created.

§ 61. **Whose consent necessary.**— Consent to adoption is necessary as follows:

1. Of the minor, if over twelve years of age;

2. Of the foster parent's, husband or wife, unless lawfully separated, or unless they jointly adopt such minor;

3. Of the parents or surviving parent of a legitimate child, and of the mother of an illegitimate child; but the consent of a parent who has abandoned the child, or is deprived of civil rights, or divorced because of his or her adultery or cruelty, or adjudged to be insane, or to be an habitual drunkard, or judicially deprived of the custody of the child on account of cruelty or neglect, is unnecessary.

4. Of a person of full age having lawful custody of the child, if any such person can be found, where the child has no father or mother living, or no father or mother whose consent is necessary under the last subdivision. If such child has no farther or mother living, and no person can be found who has the lawful custody of the child, the judge or surrogate shall recite such facts in the order allowing the adoption.

§ 62. **Requisites of voluntary adoption.**— In adoption the following requirements must be followed:

1. The foster parent or parents, the minor and all the persons whose consent is necessary under the last section, must appear before the county judge or the surrogate of the county where the foster parent or parents reside, and be examined by such judge or surrogate, except as provided by the next subdivision.

2. They must present to such judge or surrogate an instrument containing substantially the consents required by this chapter, an agreement on the part of the foster parent or parents to adopt and treat the minor as his, her, or their own lawful child, and a statement of the age of the child, as nearly as the same can be ascertained; which statement shall be taken prima facie as true. The instrument must be signed by the foster parent or parents and by each person whose consent is necessary to the adoption, and severally acknowledged by said persons before such judge or surrogate; but where a parent or person or institution having

the legal custody of the minor resides or is located in some other state or county, his or their written acknowledged consent, or the written acknowledged consent of the officers of such institution, certified as conveyances are required to be certified to entitle them to record in a county in this state, is equivalent to his or their appearance and execution of such instrument.

§ 63. **Order.**—If satisfied that the moral and temporal interests of the child will be promoted thereby, the judge or surrogate must make an order allowing and confirming such adoption, reciting the reasons therefor, and directing that the minor shall thenceforth be regarded and treated in all respects as the child of the foster parent or parents. Such order, and the instrument and consent, if any, mentioned in the last section must be filed and recorded in the office of the county clerk of such county.

§ 64. **Effect of adoption.**— Thereafter the parents of the minor are relieved from all parental duties towards, and of all responsibility for, and have no rights over such child, or to his property by descent or succession. The child takes the name of the foster parent. His rights of inheritance and succession from his natural parents remain unaffected by such adoption.

The foster parent or parents and the minor sustain toward each other the legal relation of parent and child and have all the rights, and are subject to all the duties of that relation, including the right of inheritance from each other, and such right of inheritance extends to the heirs and next of kin of the minor, and such heirs and next of kin shall be the same as if he were the legitimate child of the person adopting; but as respects the passing and limitation over of real or personal property dependent under the provisions of any instrument on the foster parent dying without heirs, the minor is not deemed the child of the foster parent so as to defeat the rights of remaindermen.

§ 65. **Adoption from charitable institutions.**— Where an orphan asylum or charitable institution is authorized to place children for adoption, the adoption of every such child shall, when practicable, be given to persons of the same religious faith as the parents of such child. The adoption shall be effected by the execution of an instrument containing substantially the same provisions as the instrument provided in this article for voluntary adoption, signed and sealed in the corporate name of such corporation by the officer or officers authorized by the directors

thereof to sign the corporate name to such instruments, and signed by the foster parent or parents and each person whose consent is necessary to the adoption; and may be signed by the child, if over twelve years of age, all of whom shall appear before the county judge or surrogate of the county where such foster parents reside and be examined, except that such officers need not appear; and such judge or surrogate may thereupon make the order of adoption provided by this article. Such instrument and order shall be filed and recorded in the office of the county clerk of the county where the foster parent resides and the adoption shall take effect from the time of such filing and recording.

§ 66. **Abrogation of voluntary adoption.**— A minor may be deprived of the rights of a voluntary adoption by the following proceedings only:

The foster parent, the minor and the persons whose consent would be necessary to an original adoption, must appear before the county judge or surrogate of the county where the foster parent resides, who shall conduct an examination as for an original adoption. If he is satisfied that the abrogation of the adoption is desired by all parties concerned, and will be for the best interests of the minor, the foster parent, the minor, and the persons whose consent would have been necessary to an original adoption shall execute an agreement, whereby the foster parent and the minor agree to relinquish the relation of parent and child and all rights acquired by such adoption, and the parents or guardian of the child or the institution having the custody thereof, agree to re-assume such relation. The judge or surrogate shall indorse, upon such agreement, his consent to the abrogation of the adoption. The agreement and consent shall be filed and recorded in the office of the county clerk of the county where the foster parent resides, and a copy thereof filed and recorded in the office of the county clerk of the county where the parents or guardian reside, or such institution is located, if they reside, or such institution is located, within this state. From the time of the filing and recording thereof, the adoption shall be abrogated, and the child shall re-assume its original name and the parents or guardians of the child shall re-assume such relation. Such child, however, may be adopted directly from such foster parents by another person in the same manner as from parents, and as if such foster parents were the parents of such child.

§ 67. **Application in behalf of the child for abrogation of an adoption from a charitable institution.**— A minor who shall have been adopted in pursuance of this chapter or of any act repealed thereby, from an orphan asylum or charitable institution, or any corporation which shall have been a party to the agreement by which such child was adopted, or any person on the behalf of such child, may make an application to the county judge or the surrogate's court of the county in which the foster parent then resides, for the abrogation of such adoption, on the ground of cruelty, misusage, refusal of necessary provisions or clothing, or inability to support, maintain or educate such child, or of any violation of duty on the part of such foster parent toward such child; which application shall be by a petition setting forth the grounds thereof, and verified by the person or by some officer of the corporation making the same. A citation shall thereon be issued by such judge or surrogate in or out of such court, requiring such foster parent to show cause why the application should not be granted. The provisions of the code of civil procedure relating to the issuing, contents, time and manner of service or citations issue out of a surrogate's court, and to the hearing on the return thereof, and to enforcing the attendance of witnesses, and to all proceedings thereon, and to appeals from decrees of surrogate's courts, not inconsistent with this chapter, shall apply to such citation, and to all proceedings thereon. Such judge or court shall have power to order or compel the production of the person of such minor. If on the proofs made before him, on the hearing on such citation, the judge or surrogate shall determine that either of the grounds for such application exists, and that the interests of such child will be promoted by granting the application, and that such foster parent has justly forfeited his right to the custody and services of such minor, an order shall be made and entered abrogating the adoption, and thereon the status of such child shall be the same as if no proceedings had been had for the adoption thereof.

After one such petition against a foster parent has been denied, a citation on a subsequent petition against the same foster parent may be issued or refused in the discretion of the judge or surrogate to whom such subsequent petition shall be made.

§ 68. **Application of the foster parent for the abrogation of such an adoption.**— A foster parent who shall have adopted a

minor in pursuance of this chapter or of any act repealed thereby, from an orphan asylum or charitable institution, may apply to the county judge or surrogate's court of the county in which such foster parent resides, for the abrogation of such adoption on the ground of the willful desertion of such child from such foster parent, or of any misdemeanor or ill-behavior of such child, which application shall be by petition, stating the grounds thereof, and the substance of the agreement of adoption, and shall be verified by the petitioner; and thereon a citation shall be issued by such judge or surrogate in or out of such court, directed to such child, and to the corporation which was a party to such adoption, or, if such corporation does not then exist, to the superintendent of the poor of such county, requiring them to show cause why such petition should not be granted. Unless such corporation shall appear on the return of such citation, before the hearing thereon shall proceed, a special guardian shall be appointed by such judge or court to protect the interests of such child in such proceeding, and the foster parent shall pay to such special guardian such sum as the court shall direct for the purpose of paying the fees and the necessary disbursements in preparing for and contesting such application on behalf of the child. If such judge or surrogate shall determine, on the proofs made before him, on the hearing of such citation, that the child has violated his duty toward such foster parent, and that due regard to the interests of both require that such adoption be abrogated, an order shall be made and entered accordingly; and such judge or court may make any disposition of the child, which any court or officer shall then be authorized to make of vagrant, truant or disorderly children. If such judge or surrogate shall otherwise determine an order shall be made and entered denying the petition.

ARTICLE VII.

Apprentices and Servants.

Section 70. Definitions; effect of article.
71. Contents of indenture.
72. Indenture by minor.
73. Indenture by poor officers.
74. Indenture by charitable corporation.

Section 75. Penalty for failure of master or employer to perform provisions of indenture.

76. Assignment of indenture on death of master or employer.

77. Contract with apprentice in restraint of trade void.

Section 70. **Definitions; effect of article.**— The instrument whereby a minor is bound out to serve as a clerk or servant in any trade, profession or employment, or is apprenticed to learn the art or mystery of any trade or craft, is an indenture.

Every indenture made in pursuance of the laws repealed by this chapter shall be valid hereunder, but hereafter a minor shall not be bound out or apprenticed except in pursuance of this article.

§ 71. **Consents* to indenture.**— Every indenture must contain:

1. The names of the parties;

2. The age of the minor as nearly as can be ascertained, which age on the filing of the indenture shall be taken prima facie to be the true age;

3. A statement of the nature of the service or employment to which the minor is bound or apprenticed;

4. The term of service or apprenticeship, stating the beginning and end thereof;

5. An agreement that the minor will not leave his master or employer during the term for which he is indentured;

6. An agreement that the master or employer will provide suitable and proper board, lodging and medical attendance for the minor during the continuance of the term; or will pay to such apprentice, or to his parent or guardian for him, an amount sufficient to provide such suitable and proper board, lodging and medical attendance;

7. A statement of every sum of money paid or agreed to be paid in relation to the service;

8. If such minor is bound as an apprentice to learn the art or mystery of any trade or craft, an agreement on the part of the employer to teach, or cause to be carefully and skillfully taught, to such apprentice, every branch of the business to which such apprentice is indentured, and that at the expiration of such apprenticeship he will give to such apprentice a certificate, in writing, that such apprentice has served at such trade or craft a full term of apprenticeship specified in such indenture;

* So in the original.

9. If a minor is indentured by the poor officers of a county, city or town, or by the authorities of an orphan asylum, penal or charitable institution, an agreement that the master or employer will cause such child to be instructed in reading, writing and the general rules of arithmetic, and that at the expiration of the term of service he will give to such minor a new bible.

Every such indenture shall be filed in the office of the county clerk of the county where the master or employer resides.

§ 72. **Indenture by minor; by whom signed.**— Any minor may, by the execution of the indenture provided by this article, bind himself or herself:

1. As an apprentice to learn the art or mystery of any trade or craft for a term of not less than three nor more than five years; or,

2. As a servant or clerk in any profession, trade or employment for a term of service not longer than the minority of such minor, unless such indenture be made by a minor coming from a foreign country, for the purpose of paying his passage, when such indenture may be made for a term of one year although such term may extend beyond the time when such person will be of full age.

An indenture made in pursuance of this section must be signed,

1. By the minor;

2. By the father of the minor unless he is legally incapable of giving consent or has abandoned his family;

3. By the mother of the minor unless she is legally incapable of giving consent;

4. By the guardian of the person of the minor, if any;

5. If there be neither parents or guardian of the minor legally capable of giving consent, by the county judge of the county or a justice of the supreme court of the district, in which the minor resides; whose consent shall be necessary to the binding out or apprenticing in pursuance of this section of a minor coming from a foreign country or of the child of an Indian woman, in addition to the other consents herein provided;

6. By the master or employer.

§ 73. **Indenture by poor officers; by whom signed.**— The poor officers of a municipal corporation may, by an execution of the indenture provided by this article bind out or apprentice any minor whose support shall become chargeable to such municipal corporation.

In such case the indenture shall be signed,

1. By the officer or officers binding out or apprenticing the minor;

2. By the master or employer;

3. By the county judge of the county, if the support of such child was chargeable to the county, by two justices of the peace, if chargeable to the town, or by the mayor and aldermen or any two of them, if chargeable to the city.

The poor officers by whom a child is indentured and their successors in office, shall be guardians of every such child and shall inquire into the treatment thereof, and redress any grievance as provided by law.

§ 74. Indenture by a charitable corporation; by whom signed.— Where an orphan asylum or charitable institution is authorized to bind out or apprentice dependent or indigent children committed to its charge, every such child shall, when practicable, be bound out or apprenticed to persons of the same religious faith as the parents of such child, and the indenture shall in such case be signed,

1. In the corporate name of such institution by the officer or officers thereof authorized by the directors to sign the corporate name to such instrument, and shall be sealed with the corporate seal;

2. By the master or employer; and

3. May be signed by the child, if over twelve years of age.

§ 75. Penalty for failure of master or employer to perform provisions of indenture.— If a master or employer to whom a minor has been indentured shall fail, during the term of service, to perform any provision of such indenture, on his part, such minor or any person in his behalf may bring an action against the master or employer to recover damages for such failure; and if satisfied that there is sufficient cause, the court shall direct such indenture to be canceled, and may render judgment against such master or employer for not to exceed one thousand nor less than one hundred dollars, to be collected and paid over for the use and benefit of such minor to the corporation or officers indenturing such minor, if so indentured, and otherwise, to the parents or guardian of the child.

§ 76. Assignment of indenture on death of master or employer.— On the death of a master or employer to whom a person is indentured by the poor officers of a municipal corporation, the

personal representatives of the master or employer may, with the written and acknowledged consent of such person, assign such indenture and the assignee shall become vested with all the rights and subject to all the liabilities of his assignor; or if such consent be refused, the assignment may be made with like effect by the county judge of the county, on proof that fourteen days' notice of the application therefor has been given to the person indentured, to the officers by whom indentured, and to his parent or guardian, if in the country.

§ 77. Contracts with apprentices in restraint of trade void.— No person shall accept from any apprentice any agreement or cause him to be bound by oath, that after his term of service expires, he will not exercise his trade, profession or employment in any particular place; nor shall any person exact from any apprentice, after his term of service expires, any money or other thing, for exercising his trade, profession or employment in any place. Any security given in violation of this section shall be void; and any money paid, or valuable thing delivered, for the consideration, in whole or in part, of any such agreement or exaction, may be recovered back by the person paying the same with interest; and every person accepting such agreement, causing such obligation to be entered into, or exacting money or other thing, is also liable to the apprentice in the penalty of one hundred dollars, which may be recovered in a civil suit.

ARTICLE VIII.

Section 90. Laws repealed.
91. When to take effect.

Section 90. **Laws repealed.**— Of the laws enumerated in the annexed schedule, that portion specified in the last column is hereby repealed.

§ 91. **When to take effect.**— This chapter shall take effect on October first, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

Code of Criminal Procedure, §§ 939 and 940.	
Revised Statutes, pt. 2, ch. 1, tit. I, art. 1,	§§ 5, 6, 7.
Revised Statutes, pt. II, ch. 8.....	All, except § 49 of tit. I.

L. 1896, ch. 272. Ch. 48, G. L.

LAWS OF —	Chapter.	Section.
1830	320	25 to 29, inclusive.
1840	80	All.
1845	11	All.
1848	200	All.
1849	375	All.
1850	266	All.
1851	321	All.
1853	576	All.
1858	187	All.
1860	90	All.
1862	172	All.
1866	656	All.
1870	277	All.
1871	32	All.
1871	934	All, except last sentence of § 3, as am. by L. 1888, ch. 437.
1873	25	All.
1873	821	All.
1873	830	All.
1877	430	All.
1878	300	All.
1879	248	All.
1880	472	All.
1884	381	All.
1884	438	All, except 1, 2, 3, 4, 5, down to and including the word " servant " first occurring, and 7 down to and including the word " adoption " first occurring.
1887	24	All.
1887	77	All.
1887	537	All.
1887	703	All.

	Ch. 48, G. L.	L. 1896, ch. 272.
LAWS OF—	Chapter.	Section.
1888.....	78.....	All.
1888.....	437.....	All, except last sentence.
1888.....	454.....	All.
1888.....	485.....	All.
1889.....	58.....	All.
1889.....	415.....	All.
1890.....	51.....	All.
1892.....	594.....	All.
1893.....	175.....	All.
1893.....	242.....	All.
1893.....	284.....	All.
1893.....	601.....	All.
1895.....	531.....	All.

PART II.

INDEPENDENT GENERAL STATUTES.

Enacted by the Legislature of 1896.

L. 1896, ch. 2 — An act for the conversion of the New York city asylums for the insane into a state hospital, and to establish the Manhattan state hospital.

Section 1. The institutions heretofore established and now known as the New York city asylums for the insane, located on Ward's island, in the city of New York, and at Central Islip, Suffolk county, New York, are hereby transferred to the custody and control of the Manhattan state hospital, which is hereby established and incorporated; and the insane persons who are inmates of the institutions so transferred, and those received thereafter, shall be provided for in accordance with the provisions of chapter one hundred and twenty-six of the laws of eighteen hundred and ninety, of chapter two hundred and fourteen of the laws of eighteen hundred and ninety-three, of chapter three hundred and fifty-eight of the laws of eighteen hundred and ninety-four and of chapter six hundred and ninety-three of the laws of eighteen hundred and ninety-five.

§ 2. For the purpose of carrying out the provisions of the preceding section of this act, the mayor, aldermen and commonalty of the city of New York are hereby authorized and directed to lease to the state of New York, at an annual rental of one dollar, the island known as Ward's island, now owned by the city of New York, together with all the buildings and improvements thereon and the equipment, fixtures and furniture of the asylums for the insane located on the said island; and the said mayor, aldermen and commonalty are also authorized and directed to convey to the state of New York for a consideration of one dollar, by warranty deed, to be approved as to its form and legal effect by the attorney-general, all of certain asylum lands at Central Islip, in Suffolk county, now owned by the city of New York,

together with all the buildings and improvements thereon, and the equipment, fixtures and furniture of the asylums for the insane located on the said land; both of the properties above specified being now used by the said city for the purposes of asylums or hospitals for the insane. The aforesaid lease and deed shall be executed by the comptroller of the city of New York, on behalf of the mayor, aldermen and commonalty of the said city. The said lease shall continue and remain in full force and effect until the same shall either be surrendered by the state or terminated by the city of New York as hereinafter provided; and it shall provide that the lands, buildings and their appurtenances, and the personal property therein contained, shall be used by the state solely for the purpose of a state hospital for the insane; and all the furniture, stock and other personal property on hand for the use of the officers or inmates of the said asylums at the time of the passage of this act shall be transferred to and become the property of the state, according to the provisions of section eight of this act. The said lease may be surrendered at any time by the state, or the same may be terminated by the city of New York by fifteen years' notice, in writing, signed by the mayor of said city, to the comptroller of the state; but in case the said lease shall be so terminated by the city of New York, the said city shall pay to the state the value, at the time of such termination, of all buildings that may have been erected and of all improvements that may have been made by the state on the premises as to which the lease is terminated. The amount so to be paid shall be determined by appraisement of five competent, disinterested persons, two of whom shall be named by the governor of the state of New York, two by the mayor of the city of New York, and the fifth by the four persons so named. The comptroller of the state is hereby authorized and directed to accept on behalf of the state a lease containing the foregoing provisions. In case the lease hereinbefore specified shall be surrendered or terminated, as hereinbefore provided, or otherwise, adequate provision shall thenceforth be made by the state for the care and custody of all insane persons who may be inmates of the institutions affected.

§ 3. Within ten days after the passage of this act, the governor, by and with the advice and consent of the senate, shall appoint

seven citizens, residents of the city of New York, two of whom shall be women, as a board of managers of said hospital; and the governor shall designate at the time of such appointment their respective terms of office with reference to the following classifications, namely: One of said managers shall serve for one year, one for two years, one for three years, one for four years, one for five years, one for six years, and one for seven years from the time of their appointment. The said persons shall hold no municipal or county office, nor legislative or any other state office during their term of office as manager. Any manager shall be subject to removal at any time by the governor for cause, an opportunity having been first given him to be heard in his defense. The successors in office of the managers aforesaid shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold office for seven years and be subject to removal in the manner aforesaid. In case of a vacancy in said board, the governor, by and with the advice and consent of the senate, shall appoint a manager to fill the unexpired term.

§ 4. The said managers shall have all the rights and powers and be subject to the same duties as are now possessed by and imposed upon the managers of the Utica state hospital, and the Manhattan state hospital shall be organized and governed by the laws organizing and at present governing the Utica state hospital, except as may be herein or hereafter otherwise provided.

§ 5. The said managers shall appoint a treasurer of said hospital, who shall reside in the city of New York, and who shall give a bond for the faithful performance of his trust, in such sum and with such sureties as the comptroller of the state may prescribe and approve; also a general superintendent, who shall be a physician of at least five years' actual experience in the care and treatment of the insane, and who shall be selected in conformity with the requirements of the civil service laws and regulations of the state. The tenure of office of the present general superintendent of the asylums hereby transferred to the state shall continue during the pleasure of the managers, and the tenure of office of the other medical officers of the said asylums shall continue during the pleasure of the general superintendent.

§ 6. The managers shall make an annual report to the state commission in lunacy, giving an account of the work of the year

and of the actual state and needs of the hospital. This report shall be accompanied by the annual reports of the general superintendent and of the treasurer; and all of these reports shall be incorporated in the annual report of said commission to the legislature.

§ 7. The general superintendent shall appoint, subject to the civil service laws and regulations of the state, and to the provisions of chapter two hundred and fourteen of the laws of eighteen hundred and ninety-three and of chapter six hundred and ninety-three of the laws of eighteen hundred and ninety-five, three medical superintendents, two of whom shall reside at Ward's island, one for the men's department and one for the women's department, and one at Central Islip; also a steward, and such number of matrons and assistant physicians as the necessities of the hospital shall from time to time require, all of whom and also the general and medical superintendents shall reside on the premises of said hospital and shall be designated the resident officers thereof; provided, however, that the proportion of assistant physicians shall not be less than one to every two hundred patients. The general superintendent shall also appoint, subject to the civil service laws and to the provisions of chapter two hundred and fourteen of the laws of eighteen hundred and ninety-three, of chapter three hundred and fifty-eight of the laws of eighteen hundred and ninety-four, and of chapter six hundred and ninety-three of the laws of eighteen hundred and ninety-five, such number of attendants and other subordinate employes as the necessities of the hospital may from time to time require.

§ 8. Upon the passage of this act the commissioners of public charities of the city of New York shall begin to close up the affairs of the said asylums, and within thirty days after the passage of this act, the said commissioners of public charities shall surrender to the possession and control of the managers of the state hospital hereby established, the lands and buildings specified in this act, together with all of their equipment, furniture, fixtures and stock which are in the possession or use of said asylums at the date of the passage of this act. Upon surrendering possession of said property to said managers, the said commissioners of public charities shall cause to be made and filed

with the said managers an itemized and true inventory in triplicate of all the property of whatsoever kind and nature so to be transferred including any and all supplies then on hand for the use of said asylums; and the managers shall take possession of said property as herein provided, giving a receipt therefor in triplicate, which receipt shall be signed by the president of the board of managers. One copy of said inventory so receipted shall be filed with the general superintendent, one in the office of the state comptroller, and one copy shall be retained by the commissioners of public charities; and thereupon the said commissioners of public charities shall be relieved from further liability for the care and custody of the property so transferred.

§ 9. Such buildings and grounds on Hart's island and on Blackwell's island as may be occupied and used by the insane at the date of the passage of this act, together with their furniture, fixtures and stock, shall at the expiration of thirty days thereafter, be under the control of the managers of the state hospital hereby established, until such time as sufficient accommodations for the inmates thereof shall have been provided by the state elsewhere; provided, however, that the control and use of said buildings and grounds by the state shall not exceed a period of five years.

§ 10. Any contracts for new buildings on Ward's island or at Central Islip, or for repairs to or renewals of buildings used by or for the insane on Ward's, Blackwell's and Hart's islands, and at Central Islip, which may be in existence at the date of the passage of this act, also any contracts for supplies for the New York city asylums for the insane for the year eighteen hundred and ninety-six, or for any portion of said year, shall remain in force and shall be fulfilled by the city of New York in accordance with the original terms and conditions of such contracts.

§ 11. The managers are hereby authorized to acquire by purchase or by lease, in the city of New York, at some point as nearly opposite Ward's island as may be available, a dock which shall be suitable for the purpose of a landing and depot for the general use of the hospital; also to purchase or lease one or more suitable steam ferryboats for the general use of said hospital; said purchases or leases to be subject to the approval of the state commission in lunacy.

§ 12. The general superintendent shall submit to the state commission in lunacy itemized monthly estimates for the maintenance of the hospital in the same form and in the same manner as the medical superintendents of the other state hospitals are now required by law to do.

§ 13. The commissioners of public charities of the city of New York shall continue to remove the dead bodies of insane patients from Ward's and Blackwell's islands, and to provide for the burial of the unclaimed dead as heretofore, and also to afford transportation by their steam ferryboats for such bodies as are claimed by friends at the hospital, such removal to be made within twenty-four hours after receipt of notice from the general superintendent of the Manhattan state hospital. The provisions of this section shall remain in force until such time as the state shall provide a cemetery for the use of said hospital.

§ 14. All acts or parts of acts inconsistent with this act are hereby repealed.

L. 1896, ch. 15 — An act to cede jurisdiction to the United States of America over certain lands in the county of Rockland, to be occupied as a military and national park upon the palisades of the Hudson and for the purposes herein specified.

Section 1. The consent of the state of New York is hereby given to the acquisition by the United States of America of the following described tract or parcel of land, upon payment of the taxes now due thereon, namely: All that tract or parcel of land in the county of Rockland and state of New York, bounded and described as follows: Beginning at a point in the west line of the boulevard, so called, where the same intersects the boundary line between the states of New York and New Jersey, and running thence northerly to a monument marked number six, on the map of palisades, by J. H. Serviss, dated eighteen hundred and seventy-four, said map being on file at New City, in the county of Rockland and state of New York; thence eastwardly on a straight line to the high-water line in the Hudson river at a point seven hundred feet south of the south line of the patent to George Lockhart, dated February twentieth, sixteen hundred and eighty-five, and thence in a southerly direction along the said high-water line to the boundary line between the states of New York and New Jersey; and thence westerly along said bound-

ary line to the point or place of beginning. And also all lands, docks, piers, bulkheads and buildings; water and lands under water; rights of navigation and dockage and riparian rights; and all rights, titles and forfeitures of, in or to the same; pertaining to said tract, or in front of, or between the same and the center of the Hudson river. And all the right, title and interest of the state of New York in or to the same or any part thereof is hereby ceded, set over and transferred to the United States; and it is provided that the United States may hold and use said tract or any part thereof for the purpose of preserving, securing and employing the same for military, naval and other purposes, as may be required, the same to be applied from time to time to such of said purposes as may be designated; and the United States may erect fortifications and other public buildings and lay out and maintain roads, drill grounds and other open spaces thereon, and build docks, piers, bulkheads and wharves and do any and all things necessary or convenient for the purposes aforesaid; and the United States shall have, hold and occupy said lands thus acquired and shall exercise exclusive jurisdiction over the same and every part thereof, subject to the restrictions hereinafter mentioned.

§ 2. The jurisdiction hereby ceded shall vest when plots and descriptions of the said lands thus acquired shall have been filed in the office of the secretary of the state of New York; such jurisdiction shall begin when and continue no longer than the United States shall hold the fee of such lands and such consent is given and jurisdiction ceded on the express condition that the state of New York shall retain concurrent jurisdiction with the United States in and over said lands in so far as that all civil and criminal process duly issued under the laws of said state or acts done and offenses committed within said state may be freely and fully executed on lands within said tract except so far as such process may affect the real or personal property of the United States; and upon the further express condition that the cliffs, rocks and plateau known as the palisades of the Hudson, and the rocks, trees and shrubs upon them and at their base, be preserved, saved and reserved from mutilation, change and destruction, save in so far as the actual occupancy thereof by the United States may

require; that the militia of the state of New York shall be allowed to use, occupy and manoeuvre upon the same and that citizens of the state of New York shall have the right to pass over and go upon said lands and to use the same as a public place; all these used being, however, subject to such rules and regulations as may be prescribed by the United States, or by any duly constituted authority thereunder; so far as such entry and use shall not interfere with the use and enjoyment thereof by the United States for the purposes for which the same may be acquired, designated or used by or under its authority, and that such use of all portions not specifically reserved shall continue until all parts shall be actually so occupied.

§ 3. As long as the fee of the lands thus acquired shall remain the property of the United States, and no longer, said lands and all rights and interests therein, shall be and continue exonerated from all taxes, assessments or other tax which may be levied or imposed under the authority of this state, and the United States shall have power and authority to allow the occupancy of such lands to continue in the present owners, their heirs and assigns under such agreements as shall be sanctioned by the properly constituted authorities thereof without excepting lands so occupied from this provision.

L. 1896, ch. 18 — An act to cede jurisdiction to the United States of America over certain lands in the town of Southfield, county of Richmond, to be occupied as sites for fortifications and sea coast defenses.

Section 1. The consent of the state of New York is hereby given to the purchase by the United States for fortification purposes from Mrs. Sarah Schuyler Martin of two parcels of land, containing in the aggregate about six and one-half acres, situate, lying and being adjacent to each other, near to and southwest from the military post of Fort Wadsworth, on Staten island, in the town of Southfield, county of Richmond, and state of New York, as the same is described in the deed conveying said lands to the United States, recorded in Richmond county clerk's office, in liber two hundred and forty of deeds, page three hundred and seventy-four. And it is hereby provided that the United States may exercise jurisdiction and control over said lands and every part thereof, subject to the restrictions hereinafter mentioned.

§ 2. The jurisdiction hereby ceded shall vest when plats and descriptions of the said lands thus acquired shall have been filed in the office of the secretary of state of the state of New York; such jurisdiction shall continue no longer than the United States shall own such lands, and such consent is given and jurisdiction ceded upon the express condition that the state of New York shall retain concurrent jurisdiction with the United States in and over such lands, so far as that all civil and criminal process, duly issued under the laws of said state, for acts done or offenses committed within said state, may be freely and fully executed on and within the said lands, except so far as such process may affect the real or personal property of the United States.

§ 3. So long as such lands thus acquired shall remain the property of the United States, and no longer, the same shall be and continue exonerated from all taxes, assessments and other charges which may be levied or imposed under the authority of this state.

L. 1896, ch. 38 — An act conferring additional powers on title guaranty companies within the counties of this State containing upwards of one hundred thousand and less than two hundred and fifty thousand inhabitants.

Section 1. Additional powers upon certain title guaranty companies.— Each title guaranty corporation organized under the general laws of this state, and having its principal place of business within a county containing upwards of one hundred thousand and less than two hundred and fifty thousand inhabitants, as appears by the last state enumeration of its inhabitants, may, within the judicial department where it shall have its principal place of business, possess and exercise, in addition to the powers conferred upon it by the insurance law of the state, the power to act as agent for any individual in the care and management of real or personal property; the power to guarantee the fidelity of persons holding places of public or private trust; the power to guarantee the performance of contracts other than insurance policies, and the power to execute or guarantee bonds and undertakings required or permitted in all actions or proceedings or by law allowed.

L. 1896, ch. 99 — An act to authorize the justices of the appellate division of the supreme court in the second judicial department to appoint a clerk, a deputy clerk and attendants, and to provide for their compensation.

Section 1. The justices of the appellate division of the supreme court in the second judicial department are authorized to appoint and at pleasure remove a clerk, a deputy clerk and five attendants. One of such attendants shall act as crier when directed by the said justices. The salary of the clerk of said appellate division shall be five thousand dollars per annum, and shall be paid quarterly by the comptroller of the state out of the public treasury. The salary of the deputy clerk shall be two thousand dollars per annum, and of each of said attendants twelve hundred dollars per annum, and shall be paid quarterly by the comptroller of the state out of moneys to be raised in the manner provided in the next section.

§ 2. To provide the money necessary to pay the salaries of said deputy clerk and attendants, the comptroller of the state shall annually apportion a sum equal to the total amount of said salaries among the counties composing the second judicial department, and cause the same to be levied and collected on the real and personal property in said counties in the same manner in which state taxes are levied and collected.

L. 1896, ch. 165 — An act to authorize the local board of any state normal and training school of this state to accept money or other property, for the benefit of such school.

Section 1. By and with the sanction and consent of the superintendent of public instruction of this state, it shall be lawful for the local board of managers of any state normal and training school of this state, to accept, for the state, the gift, grant, devise or bequest of money or other property, and to apply the same to any purpose, not inconsistent with the general purposes of such school, which shall be prescribed in the instrument by which such gift, grant, devise or bequest shall be made.

L. 1896, ch. 242 — An act to authorize the transfer of Indian children from the Thomas Asylum for Orphan and Destitute Indian Children to other asylums, hospitals or institutions for the custody and care of orphan, dependent or sick children, and to provide for their care, support and treatment therein.

Section 1. Whenever the number of Indian children in the Thomas Asylum for Orphan and Destitute Indian Children, on

the Cattaraugus Reservation, duly admitted thereto, shall be in excess of its proper capacity or the applications for admission of such Indian children to such asylum shall exceed its proper accommodations therefor, or whenever, in the opinion of the trustees of such asylum, the comfort and well-being of any such Indian children therein will likely be promoted by their removal to other asylums, hospitals or institutions for the custody, care and treatment of orphan, dependent or sick children, they may, with the approval of the state board of charities, contract with the managers or other authorities of such asylums, hospitals or institutions as they may deem desirable for the reception, care and treatment of such Indian children, as may, from time to time, be transferred thereto, at a fixed weekly per capita rate not exceeding two dollars, except in the case of sick children requiring hospital treatment and care, when the fixed weekly per capita rate shall not exceed three dollars. The sum of two thousand dollars or so much thereof as may be necessary is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, for the purpose of this act.

L. 1896, ch. 249 — An act to fix the compensation of trustees under deeds of trust to sell property for the benefit of creditors.

Section 1. Any trustee, under a deed of trust to sell real or personal property for the benefit of creditors, shall be entitled to and allowed, upon an accounting hereafter had, the same commissions as an assignee for the benefit of creditors.

L. 1896, ch. 271 — An act to regulate the practice of horseshoeing in the cities of the state of New York having a population of fifty thousand inhabitants or more.

Section 1. No person shall practice horseshoeing as a master or journeyman horseshoer in any city of this state having a population of fifty thousand inhabitants or more, unless he is duly registered as hereinafter provided in the book for that purpose in the office of the clerk of the county in which he practices.

§ 2. No person shall be entitled to register as master or journeyman horseshoer without presenting a certificate of satisfactory examination before the board of examiners as provided for in section four, and whose qualifications for examination shall be that he has served an apprenticeship at horseshoeing for at least three years.

§ 3. Any person who has been practicing as a master or journeyman horseshoer in any such city of this state for the period of not less than three years preceding the passage of this act may register within six months after the passage of this act upon making and filing with the clerk of the county in which he practices, an affidavit stating that he has been practicing horseshoeing for the period hereinbefore prescribed, and upon complying with this section shall be exempt from the provisions of this act requiring an examination. Any person who has been practicing heretofore as a master or journeyman horseshoer in any place outside of such cities for a period of three years, upon presenting satisfactory proof thereof to such examiners and filing an affidavit thereof with the county clerk of the county in which any city to which this act applies is located, shall be entitled to register and practice as a master or journeyman horseshoer in such city, without being examined as required by this act.

§ 4. A board of examiners, consisting of one veterinarian and two master horseshoers and two journeyman horseshoers, is hereby created, all of whom shall be residents of cities of the first or second class, whose duty it shall be to carry out the provisions of this act. The members of said board shall be appointed by the governor, and the term of office shall be for five years, except that the members of said board first appointed shall hold office for the term of one, two, three, four and five years as designated by the governor and until their successors shall be duly appointed. The board of examiners shall hold sessions for the purpose of examining applicants desiring to practice horseshoeing as master or journeyman horseshoer, in each city affected by this act, as often as shall be necessary, and shall grant a certificate to any person showing himself qualified to practice, and shall receive as compensation a fee of two dollars from each person examined. Three members of said board shall constitute a quorum.

§ 5. The county clerk of each county containing any such city shall provide a book, to be known as the "master and journeyman's horseshoers' register," in which shall be recoded the names of the registrants, who shall then be entitled to continue the practice of horseshoeing. Every applicant who shall have complied with the provisions of sections two and three shall be

admitted to registration, and shall pay the clerk of said county the sum of twenty-five cents, which shall be received as full compensation for such registration.

§ 6. Any person who shall present to the clerk for the purpose of registration any certificate which has been fraudulently obtained, or shall practice as a master or journeyman horseshoer without conforming to the requirements of this act, or shall otherwise violate or neglect to comply with any of the provisions of this act, shall be guilty of a misdemeanor.

L. 1896, ch. 308 — An act in relation to the incorporation called the Central Association in the state of New York, and the property of extinct Free Baptist churches and Free Baptist religious societies.

Section 1. All the property both real and personal, belonging to or held in trust for any Free Baptist church, or Free Baptist religious society organized under the laws of the state of New York, that has become, or shall become extinct, shall vest in and become the property of the Central association existing under the laws of the state of New York, and its successors and assigns; provided that this act shall not affect the reversionary interests of any person or persons in such property, nor the interests of any incorporated association; and any Free Baptist church or Free Baptist religious society becoming extinct or about to disband or disorganize may, by a vote of two-thirds of its members present and voting therefor at a meeting regularly called for that purpose assign, transfer, grant and convey all its temporalities to and place the same in the possession of the Central association existing under the laws of the state of New York.

§ 2. Any Free Baptist church or Free Baptist religious society which has failed for two consecutive years next prior thereto to maintain religious services according to the custom and usages of Free Baptist churches, or has less than thirteen resident attending members, paying annual pew rental or making annual contributions towards its support, may be declared extinct in the following manner, viz.: Upon such notice as the court may prescribe, and upon application made by petition, stating fully the facts in the case, and on evidence being furnished that the said Free Baptist church or Free Baptist religious society has ceased to hold religious services in and use said property for religious

worship or service for a term of two years previous to such application, the supreme court, at a term thereof held in the judicial district where such property is situated may grant an order declaring such church or society extinct, and thereon direct that all its temporalities shall be transferred to, and thereupon shall be taken possession of by the Central association of the state of New York, or directing that the same be sold in the manner directed by said order, and that the proceeds thereof, after the payment of the debts of such church or society, be paid over to the Central association of the state of New York. All property and proceeds from the sale of property so transferred to said association shall be used and applied for the purposes for which said Central association of the state of New York was organized and shall not be directed to any other purpose.

§ 3. All acts and parts of acts inconsistent with this act are hereby repealed.

L. 1896, ch. 312 — An act to regulate the profession of public accountants.

Section 1. Any citizen of the United States, or person who has duly declared his intention of becoming such citizen, residing or having a place for the regular transaction of business in the state, being over the age of twenty-one years and of good moral character, and who shall have received from the regents of the university a certificate of his qualification to practice as a public expert accountant as hereinafter provided, shall be styled and known as a certified public accountant; and no other person shall assume such title, or use the abbreviation C. P. A. or any other words, letters or figures, to indicate that the person using the same is such certified public accountant.

§ 2. The regents of the university shall make rules for the examination of persons applying for certificates under this act, and may appoint a board of three examiners for the purpose, which board shall, after the year eighteen hundred and ninety-seven, be composed of certified public accountants. The regents shall charge for examination and certificate such fee as may be necessary to meet the actual expenses of such examinations, and they shall report, annually, their receipts and expenses under the provisions of this act to the state comptroller, and pay the

balance of receipts over expenditures to the state treasurer. The regents may revoke any such certificate for sufficient cause after written notice to the holder thereof and a hearing thereon.

§ 3. The regents may, in their discretion, waive the examination of any person possessing the qualifications mentioned in section one who shall have been, for more than one year before the passage of this act, practicing in this state on his own account, as a public accountant, and who shall apply in writing for such certificate within one year after the passage of this act.

§ 4. Any violation of this act shall be a misdemeanor.

L. 1896, ch. 320 — An act making an appropriation for continuing the surveys provided for in chapter five hundred and ninety-nine of the laws of eighteen hundred and ninety-five, entitled "An act to provide for the survey of the upper Hudson river valley and making an appropriation therefor."

Section 1. The state engineer and surveyor and the state superintendent of public works shall continue the survey of the upper Hudson* valley, authorized by chapter five hundred and ninety-nine of the laws of eighteen hundred and ninety-five, entitled "An act to provide for the survey of the upper Hudson river valley and making an appropriation therefor," and on the completion of the said surveys shall report to the legislature in full as to all matters required by the provisions of section one of chapter five hundred and ninety-nine of the laws of eighteen hundred and ninety-five, as follows:

§ 1. The state engineer and surveyor and the state superintendent of public works shall, as soon as practicable, cause a survey to be made of the upper Hudson river valley, with a view to determining what lakes and streams may be improved, or the waters thereof stored or diverted, in order to provide for an enlargement of the Champlain canal; for restoring to the water power of the Hudson river at or below Glens Falls, the water diverted therefrom for canal purposes, and for improving the navigation of the lower Hudson river. The state engineer and surveyor and the state superintendent of public works shall locate the particular sites for dams, establish the lines of flow for securing the full storage available at the various reservoir sites. Such survey may disclose and make careful estimates of the cost of constructing such dams or reservoirs, and of the amount of stored water that will result from the full development thereof.

*So in the original.

§ 2. The sum of ten thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated to be paid by the treasurer, on the warrant of the comptroller to the order of the state engineer and surveyor, for the purpose of making the surveys and reports required by this act.

L. 1896, ch. 339 — An act to enable the towns and cities of this state to use the Davis automatic ballot machines at all elections therein.

Section 1. The common council of any city, and the town board of any town within this state may adopt the Davis automatic ballot machine for use at all elections, and thereupon it shall be lawful to use such ballot machines for the purpose of voting for all public officers to be elected by the voters of such town or city, or any part thereof, and upon all constitutional amendments or propositions, or questions which may lawfully be submitted to such voters, and for registering and counting the ballots cast at such election.

§ 2. The common council of each city, and the town board of each town adopting said machine, shall provide for each polling place, at each election therein, the necessary ballot machines, in complete working order, with the dials of the counters set at 0, and shall care for the said ballot machines, as well as the furniture and equipment of the polling places when not in use at elections.

§ 3. The ballot machine and every part of the polling place shall be in plain view of the election officers, including the watchers. The ballot machines shall be placed at least three feet from the wall of the room and at least three feet from the outer guard-rail. The inspectors' table shall be at least four feet from the ballot machine. An inner guard-rail shall extend from the ballot machine and between the entrance and exit doors thereof to a point at or near the inspectors' table. The outer guard-rail shall be so placed as to bar access to within three feet at least of the ballot machine, but with openings or gateways leading to and from the inspectors' table. Party nominations shall be arranged in columns, or else in horizontal rows, upon the said machines, and at the head of each of said

columns, or else at the end of each of said rows, as the case may be, ballot captions shall be placed of cardboard, or heavy paper, not less than four inches long nor less than three inches wide, which shall have printed thereon, in plain, clear type, as large as the place will reasonably permit, the party or other lawful designation of the nominee, amendments, or other questions or propositions submitted to vote. For each candidate lawfully nominated, and for each constitutional amendment or other proposition lawfully submitted to vote, a push key or lever shall be set as provided in section two of this act, and adjacent thereto shall be attached a printed ballot or cardboard, or heavy paper, not less than three inches long and not less than two inches wide, upon which shall be printed in plain, clear type, as large as the space will reasonably permit, the name of the office and the name of the candidate or nominee therefor; or a concise statement of the amendment, question or proposition submitted, under successive headings for and against. Should any party fail to make a nomination for any office, the ballot in that party's column or horizontal line upon the keyboard devoted to that office shall be left blank, and the push-knob or lever thereof shall be capped or otherwise arranged so as to be inoperative. Should two or more parties nominate the same person for the same office, or should the same person be nominated for the same office by any party and also by independent nomination, his name shall be printed upon the ballot of the party, or in the list of independent nominations, the certificate of which shall first be filed as required by law; provided, however, that such nominee may, within two days after his second nomination, by a written instrument, acknowledged as deeds are required to be acknowledged for record, and filed with the county clerk of the county, require his name to appear in the column or horizontal line of some other party so nominating him, and the county clerk shall prepare his ballot accordingly, and the ballot of the other party or parties which shall have nominated him shall be left blank for that office, and the corresponding push-knob or push-knobs or levers shall be capped or otherwise arranged so as to be inoperative. If two or more officers are to be elected to the same office for different terms, the term for which each is nominated shall be designated on the ballot. The ballot captions and ballots of the several

political parties or other nominating bodies, and those for and against constitutional amendments or other propositions or questions, shall be distinguished from each other by distinctive colors, and the ballot captions shall contain thereon the party emblems as provided by section fifty-six of chapter eight hundred and ten of the laws of eighteen hundred and ninety-five. In addition to the push-knob or lever and the ballot for each candidate, such ballot machines may also provide in each column or horizontal line of the party nominations a separate push-knob or lever to vote a ballot printed in plain, large type "straight ticket." In presidential elections such ballot machines may provide in each column a horizontal line of party nominations a separate push-knob or lever to vote a ballot for all the presidential electors nominated by such party.

§ 4. The county clerk of the county shall provide at the expense of the county, the requisite number of ballots, ballot captions, counter labels and instruction cards for each polling place in such town and city for each election to be held thereat, except for town meetings, village elections, and the elections of school officers not held at the same time as the general election, in which latter case the clerk of such village, town or school district shall provide at the expense of said village, town or school district the requisite number of ballots, ballot captions, counter labels and instruction cards for each polling place. The ballots, ballot captions, counter labels and instruction cards shall be printed and in possession of the clerk charged with the duty of providing them and open to the public inspection four days before every election, except in case of a town meeting, village election, or election of school officers not held at the same time as the general election, in which case they shall be so printed and open to public inspection two days before such election.

§ 5. Four sample ballots of each kind shall be provided for each polling place, and four instruction cards printed in such other language or languages as the common council or the town board may prescribe, shall be provided for each polling place, together with four complete sets of ballot captions. The ballot captions and ballots shall be duplicates of those used upon the machine, and the instruction cards shall be printed in clear type so as to be easily read. The instruction cards shall state

the prescribed colors and emblems of the party ballots, and of the ballots of independent nominees, and shall give a summary of the laws punishing violations of the election law and full instructions for the use of said ballot machines.

§ 6. The county clerk or other officer having charge of the printing of the ballots, ballot captions and instruction cards, shall on his own motion, correct any error therein upon discovery thereof, which can be corrected without interfering with their distribution and use at the election.

§ 7. Counter labels shall be of cardboard or heavy paper of the same length, width and color as the ballots, and shall be so placed on the machine as that the registering counter for each push-knob or lever shall show, adjacent to the label or ballot, the number of ballots cast for the candidate whose name is printed upon said counter label.

§ 8. The clerk charged with the duty of providing ballots, ballot captions, counter labels and instruction cards shall, on Saturday before the election at which they are to be used, deliver to the clerk of each town and city in the county, the ballots, ballot captions, counter labels and instruction cards required for each polling place in such town or city.

§ 9. The inspectors of election and poll clerks shall meet at their respective polling places in each election district, thirty minutes before the time of opening of the polls therein. After the election of one of their number as chairman, they shall post the instruction cards and sample ballot captions, and shall, if the same has not already been done, adjust and secure within the frames upon the key-board, the ballot captions and ballots in the presence of the official watchers. The inspectors shall then fully open the doors of the counter compartment in the presence of the inspectors and watchers, and shall thereupon push the push-knobs or levers on the balloting side of the machine until all the counter dials register at zero. The counting apparatus shall then be locked.

§ 10. After the polls shall have been duly opened, the voters shall pass through the opening in the outer guard-rail singly or in single file to the inspectors' table. If the voter shall be found entitled to vote, one of the inspectors shall admit him to the ballot machine through the entrance.

§ 11. Any voter who shall be totally blind or without the use of either hand sufficient to push the knobs or levers, or who shall be physically unable to enter or leave the ballot machine without assistance, may choose from the inspectors or poll clerks an assistant who shall be admitted to the ballot machine with him, provided he shall have been duly registered as a disabled voter pursuant to section one hundred and five of chapter eight hundred and ten of the laws of eighteen hundred and ninety-five; but intoxication or illiteracy shall not be regarded as a physical disability. The inspector or poll clerk selected by the voter shall not in any manner request nor seek to persuade or induce such voter to vote any particular ballot, or for any particular nominee, amendment, question or proposition, and shall not reveal for whom such disabled voter voted.

§ 12. In case any voter after entering the ballot machine shall ask for further instructions concerning the manner of voting, two inspectors of opposite political parties shall stand outside the machine and give such directions to the voter as they two may agree upon, except that under no circumstances shall either of them give advice as to voting for any particular nominee, amendment, question or proposition.

§ 13. No voter shall remain within the ballot machine longer than one minute, and if he shall refuse to leave the said machine after the lapse of one minute, he shall be removed by the inspectors.

§ 14. As soon as the polls are closed the ballot machine shall be locked against voting, and the counting compartment opened in the presence of the watchers and all other persons who may be lawfully within the room, or voting place, giving full view to the dial numbers announcing the votes cast for each candidate, and for or against the various constitutional amendments, questions or other propositions.

§ 15. The inspectors shall then add together the votes cast for each candidate upon the straight ticket, if any, and the votes cast for such candidates by reason of the push-knob or lever bearing the name of that candidate, and officially and publicly announce the total vote for each candidate thus ascertained. Before leaving the room or voting place, and before closing and locking the counting compartment, the inspectors shall make and

sign written statements of election required by section one hundred and fifteen of chapter eight hundred and ten of the laws of eighteen hundred and ninety-five, except that such statements of the canvass need not contain any ballots, official or defective. The written statements so made, after having been signed by the inspectors, shall be read in the hearing of all persons present and ample opportunity given to compare the results so certified, with the counter dials so exposed to public view. After such comparison and correction, if any, are made, the inspector shall then close the counting compartment.

§ 16. No ballot clerk shall be elected or appointed in any town or city that shall have adopted the use of the ballot machine.

§ 17. All provisions of the election law, not inconsistent with this chapter, shall apply with full force to all towns and cities adopting the use of ballot machines.

L. 1896, ch 369 -- An act to amend the business corporations law, relating to incorporation.

(§ 1 of this act amends § 2 sub. 9, of the Business Corporations Law, and § 2 is set out in ful l in note thereto).

L. 1896, ch. 371 — An act to authorize the issuing of licenses to honorably discharged soldiers, sailors and marines for hawking, peddling and vending of merchandise within this state.

Section 1. Every honorably discharged soldier, sailor or marine of the military or naval service of the United States who is a resident of this state shall have the right to hawk, peddle and vend any goods, wares or merchandise or solicit trade within this state by procuring a license for that purpose to be issued as herein provided.

§ 2. On the presentation to the clerk of any county in which any soldier, sailor or marine may reside, of a certificate of discharge from the army or navy of the United States, such county clerk shall issue without cost to such soldier, sailor or marine a license certifying him to be entitled to the benefits of this act.

L. 1896, ch. 378 — An act providing for a special jury in criminal cases in each county of the state having a certain population, and for the mode of selecting and procuring such special juries; also creating a special jury commissioner for each of such counties, and regulating and prescribing his duties.

Section 1. The office of special commissioner of jurors is hereby created for each county of the state having a population of five

hundred thousand or more. The term of such office shall be five years, and it shall be filled by appointment to be made by the appellate division of the supreme court in the department within which each county embraced by this act is situated.

§ 2. Within twenty days after the passage of this act, and from time to time as a vacancy shall occur, the justices of the appellate division of the supreme court in the department within which each county embraced by this act is situated, may appoint a suitable person to be special commissioner of jurors for such county. The appointment shall be made by a majority of the justices, in writing, and filed in the office of the clerk of the county. The said commissioner shall hold office for five years and until his successor is appointed and qualified, but the said justices may at any time, at pleasure, by a vote of a majority of all their number, remove the said commissioner, and appoint a successor.

§ 3. The said special jury commissioner shall receive a salary or compensation to be fixed by the said justices, not exceeding six thousand dollars per annum, payable monthly by the county. He may, with the consent of the said justices, expressed in writing, from time to time, at pleasure, appoint and remove such clerks, assistants and messengers as shall be necessary for the proper execution of this act. All appointments and removals under this section shall be filed in the office of the county clerk. The salaries or compensation of such clerks, assistants and messengers shall be fixed and paid in like manner as the salary or compensation of the special jury commissioner.

§ 4. The sheriff of each county embraced within this act shall, under the direction of the said justices, and subject to their approval, provide a suitable office, properly furnished and equipped, for such special jury commissioner, and all such books, stationery, printing, blanks, postal cards and postage stamps as shall be required for the duties hereby created. The rent of such office, the cost of the furniture and equipments thereof, and of all books, stationery, printing, blanks, postal cards and postage stamps to be so provided shall be a county charge.

§ 5. The commissioner of jurors in each county embraced by this act shall, in addition to the return of jury lists to the county clerk, and in addition to all the other duties imposed upon him by

law, within such time after the appointment of such special jury commissioner as may be fixed by said appellate division, return to such special jury commissioner, to be filed in the latter's office, certified copies of all lists of persons liable to serve as trial jurors in the courts of record for the current jury year. Such ordinary commissioner of jurors shall also thereafter, from time to time, return to such special jury commissioner certified copies of all lists of persons liable to serve as trial jurors in the courts of record for each ensuing jury year. He shall also in like manner, from time to time, return to such special jury commissioner, certified copies of all further or additional lists of persons liable to serve as trial jurors in the courts of record for such current jury year and for each ensuing jury year.

§ 6. The special jury commissioner shall select from the lists so furnished him by the ordinary commissioner of jurors such number of special jurors as the said justices of the appellate division shall from time to time direct. He shall keep a record of the names and addresses of the special jurors so selected. For that purpose the names of the persons so selected, liable to serve as special jurors, must be entered in suitable books, alphabetically, with the place of business and residence of each. And lists of such names shall be made out by said special jury commissioner and kept in his office. The special jury commissioner shall have power from time to time, as he may deem expedient, to cancel such selections, and to strike the names of the special jurors from the lists, and thereupon to select other special jurors in their places.

§ 7. Each special juror so selected shall have the following qualifications:

1. He shall be a male citizen of the United States of at least ten years' standing, and a resident of the county.

2. He shall be not less than thirty nor more than seventy years of age.

3. He shall be in possession of his natural faculties, and not infirm.

4. He shall be free from all legal exceptions; of good character; of approved integrity; intelligent; of sound judgment; able to read and write the English language understandingly; and well informed; and he shall have an adequate knowledge of the duties of a juror.

§ 8. The special jury commissioner shall not select as a special juror any person who is by law disqualified or exempt from service as a trial juror; nor shall he select any person who has been convicted of a criminal offense, or found guilty of fraud or other misconduct by the judgment of any civil court; nor any person who possesses such conscientious opinions with regard to the death penalty as would preclude his finding a defendant guilty if the crime charged be punishable with death; nor any person who doubts his ability to lay aside opinions or impressions formed from newspaper reading or hearsay, and to render an impartial verdict upon evidence, uninfluenced by any such opinions or impressions; nor any person who possesses such opinions as would prevent his finding a verdict of guilty in any case upon circumstantial evidence; nor any person who avows such a prejudice against any law of the state as would preclude his finding a defendant guilty of violating such law; nor any person who avows such prejudice against any particular defense to a criminal charge as would prevent his giving a fair and impartial trial upon the merits of such defense; nor any person who avows that he cannot in all cases give to a defendant who fails to testify as a witness in his own behalf the full benefit of the statutory provision that his neglect or refusal to so testify as a witness in his own behalf does not create any presumption against him.

§ 9. The special jury commissioner may make inquiries, and conduct examinations into the qualifications of special jurors anywhere within the county. No person shall be selected until he has been personally examined by the special jury commissioner as to his qualifications, as to his fitness to serve as a special juror, and as to the matters referred to in the last preceding section. A subpoena may be issued by and under the hand of the said special jury commissioner requiring any person within the county to attend before such commissioner, at his office or elsewhere, at a specified time, not less than two days after the service of the subpoena, for the purpose of testifying concerning the qualifications or fitness to serve as a special juror of any person whose name appears upon the ordinary jury lists of the county, and the propriety of his selection as such special juror. Such subpoena must be served by exhibiting the original thereof to the person named therein and delivering to him a copy thereof.

A person so subpoenaed must attend and testify accordingly. If he fail to attend, as specified, in the subpoena, for any cause except physical inability, or if he refuses to be sworn or to answer any legal and pertinent question put to him by the commissioner, he may be punished therefor by any justice of the supreme court. And all the provisions of title two of chapter nine of the code of civil procedure are made applicable to such a case, except that no fees are required to be paid to any such person. One or more successive subpoenas may be issued to said commissioner, and may be served upon the same person, where he fails to attend as required by a former subpoena; and all the provisions of title two of chapter nine of the code of civil procedure are likewise made applicable in case of failure to attend pursuant to such successive subpoenas, or to be sworn or to answer any legal and pertinent question put to such person by the commissioner.

§ 10. The special jury commissioner shall, in the record made by him as hereinbefore provided, enter the age of each special juror so selected; his business or vocation, if any; how long he has resided in the state and county; and, if such person be not a citizen by birth, the date of his naturalization. Such record shall be open to inspection by either the district attorney of the county or the counsel for the defendant, whenever such person shall be drawn and summoned as a special juror. The special jury commissioner is not required to keep any other record of his inquiries, examinations or proceedings with regard to the qualifications, fitness or selection of special jurors.

§ 11. When such special jury commissioner shall have selected the full number of special jurors, as directed by said appellate division justices, he shall prepare suitable ballots by writing the name of each person thus selected, with his place of residence and place of business and other additions on a separate piece of paper. The ballots must be uniform as nearly as may be in appearance, and the said commissioner must deposit them in a box kept for that purpose.

§ 12. Persons who are selected by the special commissioner to act as special jurors shall be exempt from all other jury duty from and after the date of their selection, and they shall remain exempt so long as they continue to be such special jurors. No

special juror who has actually served as such upon a trial shall be drawn upon another trial during the ensuing year, and the ballot upon which his name is written, shall, upon his discharge from such actual service, be withdrawn from the special jury box. Upon the expiration of one year thereafter such ballot may again be deposited in the special jury box. Upon the completion of his lists of special jurors, the special commissioner shall file with the commissioner of jurors of the county a certified copy of said list of special jurors.

§ 13. When an indictment has been found by a grand jury in any county embraced by this act, and an issue of fact has arisen thereupon upon a plea of not guilty, the people or the defendant may apply for a special jury to try such issue. Such application must be made to the appellate division of the supreme court in the judicial department within the boundaries of which the county is embraced. It must be so made upon the indictment, the plea thereto and affidavit, and five days' notice of motion. Where, upon such application, it appears that a fair and impartial trial of such issue can not be had without a special jury, or that the importance or intricacy of the case requires such jury, or that the subject-matter of the indictment has been so widely disseminated or commented upon by the press or otherwise as to induce the belief that an ordinary jury can not, without delay and difficulty, be obtained to try such issue, or that for any other reason the due, efficient and impartial administration of justice in the particular case requires that the trial of such issue be had by special jury, the said appellate division of the supreme court may make an order directing that such trial be had by a special jury, and such trial shall be had accordingly. The order must specify the time when the drawing of the special jury shall take place, and the number of special jurors to be then drawn. Also the term of the court and the particular day in the term when the special jurors so drawn must attend.

§ 14. At the time specified in the order, a justice of the supreme court, the clerk of the county, or his deputy, and the sheriff of the county, or his undersheriff, must attend at the office of the special commissioner of jurors to witness and assist in the drawing of such special jurors.

§ 15. The drawing must be conducted as follows:

(1.) The county clerk, or his deputy, must shake the box containing the ballots so as to thoroughly mix them.

(2.) He must then, without seeing the name contained in any ballot, publicly draw out of the box one ballot, and continue to draw in like manner, one ballot at a time, until the requisite number has been drawn.

(3.) A minute of the drawing must be kept by the special jury commissioner, which must be entitled in like manner as the order of the appellate division. In this minute must be entered the name contained in each ballot drawn, before another ballot is drawn, and it must specify the term of the court and the particular day in the term when the special jurors so drawn must attend. The minute must be signed by the justice of the supreme court then present, by the special jury commissioner, by the county clerk, or his deputy, and by the sheriff, or his undersheriff, and such minute so signed must be filed in the office of the county clerk of said county.

(4.) The ballot so drawn shall, upon the completion of such minute, be returned to the special jury commissioner, who shall retain the same in his possession until the commencement of the trial, when he shall redeposit in such special jury box all such ballots, except those which name the particular jurors who are actually serving upon the trial. This provision also applies to the ballots of additional jurors which may be drawn as hereinafter provided.

§ 16. The county clerk of said county must deliver to the sheriff a certified copy of the minute. The sheriff must forthwith notify each special juror named therein to attend the trial court, term or part for which he was drawn at the opening of such trial court, term or part upon the day specified in the minute. The sheriff shall so notify each special juror by serving upon him a notice addressed to him, stating that he has been drawn as such special juror for the trial of the defendant named in the minute and that he is required to attend the trial court, term or part named in the notice at the opening of such court, term or part upon the day specified in each notice. The notice must, if practicable be served personally; otherwise it must be served by leaving it at the special juror's residence and also at his usual place of business with a person of proper age and discretion at each place.

In that case the person serving such notice shall ascertain the name of each person with whom the notice is so left, and the relation of such person to, or his or her connection with, the special juror. And he shall specify such facts in a special affidavit of the service of such notice. Before the day specified in such notice for the attendance of the special jurors, the sheriff must file with the clerk of the said trial court, part or term the certified copy of the minute with a return under his hand annexed thereto, naming each special juror notified and specifying the manner in which he was notified, and the time and place of the service of such notice. An affidavit of the person by whom each service shall have been personally made, stating the manner, time and place of such service, shall accompany such return. Where such service shall not have been personally made, the special affidavits of service above provided for shall accompany such return.

§ 17. From the persons so notified and attending, and, in case such first panel of special jurors shall be exhausted without completing the jury, from the additional special jurors to be drawn as hereinafter provided, a jury must be formed for the trial. But the trial court may, in its discretion, for good cause, or if satisfied that the ends of justice will be promoted thereby, set aside a juror at any time before evidence is given in the action.

§ 18. The parties shall have the same number of peremptory challenges and the same challenges for cause to be tried in the same manner as upon a trial with an ordinary jury.

§ 19. The rulings of the trial court in admitting or excluding evidence upon the trial of any challenge for actual bias shall not be the subject of exception. Such rulings, and the allowance or disallowance of the challenge shall be final.

§ 20. If the panel of special jurors thus drawn shall be exhausted before the jury is complete, or if prior thereto the trial court shall be of the opinion that additional special jurors will probably be needed to complete the jury, the trial court may, from time to time, direct such additional special jurors to be drawn for the trial for the special jury box as may be deemed expedient. The order must specify the number to be drawn, the time of the drawing and the time when the additional jurors shall be required and notified to attend. The additional draw-

ing must be made by the county clerk or his deputy in open court, in the presence of the judge or justice presiding at the trial, and of the special jury commissioner, who shall there produce the special jury box for the purpose of such additional drawing. Neither the sheriff nor his undersheriff need attend upon the drawing of such additional jurors. Such drawing or drawings shall otherwise be conducted in the same manner as the original drawing. A minute thereof shall, in like manner, be kept by the special jury commissioner, which minute shall be entitled in the action, and shall specify, in addition to the names contained in each ballot drawn, the time stated in the order directing such additional drawing, when such additional jurors are required to attend such trial court. This minute shall be signed by the judge or justice presiding at the trial, by the county clerk or his deputy and by the special jury commissioner, and when so signed filed in the office of the county clerk of said county.

§ 21. The county clerk of said county must forthwith deliver to the sheriff a certified copy of such minute. The sheriff must forthwith notify each additional special juror named in the minute to attend the court for which he was thus drawn at the time specified in such minute. The sheriff shall so notify each additional special juror by notice of the same tenor, and to be served in the same manner provided for upon the original drawing of special jurors. Said sheriff must, before the hour specified in the minute for the attendance of such additional special jurors, file with the clerk of said trial court the certified copy of the minute with a return under his hand annexed thereto, and affidavits accompanying such return of the same tenor as the return and affidavits required in the case of the original drawing.

§ 22. Upon the formation of the special jury as hereinbefore provided, the issue must be tried as prescribed in the code of criminal procedure with respect to a jury trial in a criminal action with an ordinary jury.

§ 23. This act shall take effect immediately.— But no application shall be made for a special jury under section thirteen of this act until the special jury commissioner of the county in which such trial is to be had shall have made his first selection of the full nunber of special jurors which he has been directed to make, and which shall not be less than three thousand. And

no drawing shall be had in any particular case under this act unless at the time when the order directing the trial thereof by a special jury is made, there shall be at least three thousand names of duly selected jurors in the special jury box.

L. 1896, ch. 384 — An act to regulate the employment of women and children in mercantile establishments and to provide that the same shall be enforced.

Section 1. No male under sixteen years of age, and no female under twenty-one years of age, employed in any mercantile establishment of this state, shall be required, permitted or suffered to work therein more than sixty hours in any one week; nor more than ten hours in any one day, unless for the purposes of making a shorter work day on any one day of the week; and in no case shall any male under sixteen years of age, nor any female under twenty-one years of age, work in any mercantile establishment after ten o'clock in the evening or before seven o'clock in the morning of any day. The foregoing provision of this section shall not be so construed as to apply to the employment of any person in any mercantile establishment on any Saturday of the year, except that the total number of hours of labor per week of a male under sixteen or a female under twenty-one shall not exceed sixty hours. None of the provisions of this section shall apply to the employment of any persons between the fifteenth day of December of any year and the first day of January of the year next following:

§ 2. No child under fourteen years of age shall be employed in any mercantile establishment in this state. It shall be the duty of every person employing children to keep a register in which shall be recorded the name, birthplace, age and place of residence of every person employed by him under the age of sixteen years; and it shall be unlawful for any proprietor, agent, foreman, or other person in or connected with a mercantile establishment, to hire or employ any child under the age of sixteen years to work therein without there is first provided and placed on file in the office thereof a certificate as hereinafter set forth. Which said register and certificate shall be produced for inspection on demand made by the board or department of health or health commissioner or commissioners of any city or town or incorporated village where such child is employed. The certifi-

cate to be provided as above set forth shall be a certificate from the board or department of health or health commissioner or commissioners of the city or town where such child resides or is employed, or is about to be employed, which said certificate shall state the date and place of birth of such child whenever possible, and shall describe as accurately as may be the color of hair, color of eyes, height and weight, and any distinguishable facial marks of said child, and shall further state that the health commissioner or commissioners or the executive officer or officers of the board, or department of health, or any person or persons designated by him or them, as hereinafter provided, is satisfied that such child is physically able to perform the work which it intends to do, and that the date of birth of said child as set forth in said certificate is correct. Wherever the date of birth of such child cannot be ascertained by said board or department of health, health commissioner or commissioners, such certificate so provided shall so set forth and shall state that the health commissioner or commissioners or executive officer or officers of the board or department of health, or the person or persons designated by them as hereinafter provided is satisfied that such child is fourteen years of age or upwards. It shall be the duty of the board or department of health or health commissioner or commissioners of the cities and towns of the state to issue the certificates as above set forth to any child applying therefor; provided, however, that such board or department of health, or health commissioner or commissioners, shall first ascertain the date and place of birth of the child wherever possible, the color of hair, color of eyes, height and weight, and any distinguishing facial marks of said child, and the physical fitness of such child for the work which it intends to do. Such certificate shall not be issued, however, unless there shall be placed on file with such board or department of health, or health commissioner or commissioners, the affidavit of the parent or guardian of such child, or person standing in parental relation to it, stating the age, date and place of birth of said child, and unless such board or department of health or health commissioner or commissioners, or any person or persons designated by them as hereinafter set forth are satisfied that said child is fourteen years of age or upwards, and has regularly attended upon in-

struction at a school in which at least the common branches of reading, spelling, writing, arithmetic, English grammar and geography are taught, or upon equivalent instruction by a competent teacher elsewhere than at a school for a period equal to one school year, that is to say, to as many days as the public school of the city or school district in which such child resides was in session during the last preceding school year; or if said child be a nonresident, then to as many days of the public school of the city or town where such child is or is about to be employed was in session during the last preceding school year. The foregoing provisions of this section shall not, however, be so construed as to prevent any child twelve years of age or upwards, who can read and write simple sentences in the English language from being employed in any mercantile establishment in this state during the vacation of the public schools in the city or school district where such child lives, or if such child be a nonresident, then during the vacation of the public schools in the city or school district where said mercantile establishment is situated, if all of the provisions hereinbefore set forth, except that requiring school attendance shall have been complied with Where such child of the age of twelve years or upwards has complied with all the provisions of this section except that requiring school attendance, the certificate issued by the board or department of health, or health commissioner or commissioners of the city or town in which such child resides shall so set forth, and shall be designated a "vacation certificate" and it shall be unlawful for any proprietor, agent, foreman, or other person in or connected with a mercantile establishment, to hire or employ any child under the age of fourteen years, to whom such "vacation certificate" only has been issued, at any time other than the time of the school vacation of the public school in the city or school district where such child resides, or if it be a nonresident, at any time other than the time of the school vacation of the public school in the city or school district where such mercantile establishment is situated, the certificate or certificates to be issued in accordance with the provisions of this section shall be over the signature of the board or department of health or any executive officer or officers thereof, or of the health commissioner or commissioners of the city or town where

such child resides or is employed, or about to be employed, or over the signature of any person or persons designated by such board or department, or health commissioner or commissioners for that purpose, which designation shall be in writing, and filed in the office of the clerk of the county in which the office of said board or department of health, or health commissioner or commissioners is situated. It shall be the duty of the principal or the executive officer of any school, or of a teacher elsewhere than at a school, to furnish upon demand to any child who has attended upon instruction at such school, or by such teacher, or to furnish to the board or department of health, or health commissioner or commissioners of any city or town a certificate stating the school attendance by such child.

§ 3. It shall be unlawful for any notary public or other officer authorized and empowered by law to administer to any person an oath, to demand or receive a fee for taking or administering an oath, to a parent or guardian or a person in parental relation to any child as to the age of such child, where the affidavit thus taken is used or intended to be used for the purpose of obtaining a certificate as provided for in the foregoing section, from any board or department of health or health commissioner or commissioners as therein set forth.

§ 4. The words "mercantile establishment" wherever used in this act shall be construed to mean any place where goods, wares, or merchandise are offered for sale.

§ 5. A suitable and proper wash-room and water-closets shall be provided in each mercantile establishment in which women and children are employed, or in or adjacent to or connected with the building in which such mercantile establishment so having women and children employed therein is situated, and so located and arranged as to be easily accessible to the employes of such establishment, and such water-closets shall be properly screened and ventilated, and kept at all times in a clean condition, and the water-closets assigned to the women and girls employed in such establishment shall be wholly separate and apart from those assigned to men. Whenever a lunch-room is provided in any retail mercantile establishment where females are employed, such place shall not be next to or adjoining any water-closet or

water-closets, unless permission is first obtained from the board or department of health, or health commissioner or commissioners of the city or town where such mercantile establishment is situated, which permission shall be granted by such board or department of health, or health commissioners unless such board or department of health, or health commissioner or commissioners are satisfied that proper sanitary conditions do not exist, and such permission shall be revoked at any time when such board or department of health or health commissioner or commissioners are satisfied that such lunch-room or lunch place is kept in a manner or in a part or parts of the building injurious to the health of the persons using the same.

§ 6. It shall be the duty of all employers of females in any mercantile establishment to provide and maintain chairs or stools or other suitable seats for the use of such female employes to the number of one seat for every three females employed, and to permit the use of such seats by such employes, at reasonable times, to such an extent as may be requisite for the preservation of their health. And such employes shall be permitted to use same as above set forth in front of the counter, table, desk or any fixture, when the female employe for the use of whom said seat shall be kept and maintained is principally engaged in front of said counter, table, desk or fixture; and behind such counter, table, desk or fixture, when the female employe, for the use of whom said seat shall be kept and maintained is principally engaged behind said counter, table, desk or fixtures.

§ 7. No woman or children shall be employed in the basement of any mercantile establishment unless permission is obtained by the proprietor of the establishment from the board or department of health or health commissioner or commissioners in the city or town in which said mercantile establishment is situated, allowing the employment of women and children in such basement. The board or department of health or health commissioner or commissioners shall not grant such permission unless they are satisfied that such basement is sufficiently lighted and ventilated and is in all respects in the sanitary condition which is necessary for the health of those employed.

§ 8. Not less than forty-five minutes shall be allowed for the noonday meal in any mercantile establishment in this state.

§ 9. It shall be the duty of the board or department of health or health commissioner or commissioners of the cities and towns in the state to cause this act to be enforced, and whenever any of the provisions of this act are violated to cause all violators thereof to be prosecuted, and for that purpose, the health commissioner or commissioners and the officers or officer of the board of health of every city or town in the state, or the inspectors thereof, or any other persons designated by such board of health or health commissioners, are authorized and empowered to visit and inspect at all reasonable hours and as often as shall be practicable and necessary all mercantile establishments in the city or town in which the office of said board or department of heath or health commissioner or commissioners is situated. It shall be unlawful for any person to interfere with or obstruct or injure by force or otherwise any officer or employe of any board or department of health or of any health commissioner or commissioners appointed to enforce the provisions of this act, while in the performance of his or her duties, or to refuse to properly answer questions asked by such officer or employes in reference to any of the provisions of this act.

§ 10. Proceedings under this act must be begun within thirty days after the commission of the alleged offense.

§ 11. Any person who violates or omits to comply with any of the foregoing provisions of this act, or who suffers or permits any child to be employed in violation of its provisions, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty dollars, nor more than one hundred dollars for a first offense, and not less than forty dollars nor more than two hundred dollars, or by imprisonment of not more than sixty days for a second offense, and for a third offense by a fine of not less than two hundred dollars nor more than three hundred dollars, or by imprisonment of not more than ninety days, or by both such fine and imprisonment. If the board or department of health, or health commissioner or commissioners charged by the ninth section of this act with the duty of causing this act to be enforced, shall discover that any mercantile establishment has more than four women and children employed therein, so as to require such provisions of wash-room and water-closets to be made therefor, as by the fifth section of this act is required, and

that such wash-room and water-closets have not been provided, it shall be the duty of such board or department of health, or health commissioner or commissioners to cause to be served on the owner or owners of the building in which such mercantile establishment is situated, written notice of such omission, and requiring such wash-room and water-closets to be provided, and if such owner or owners shall thereupon cause fit wash-room and water-closets to be provided within fifteen days after receipt of such notice, he or they shall not be deemed guilty of a misdemeanor in respect of the obligation to provide the same.

§ 12. A copy of this act shall be posted in three different conspicuous parts of every mercantile establishment in this state where persons are employed who are affected by the provisions of this act. The foregoing provisions of this act shall apply to cities and incorporated villages of this state which at the last state census had a population of three thousand or more.

§ 13. All acts or parts of acts inconsistent with this act are hereby repealed.

L. 1896, ch. 390 — An act to provide for the reimbursement of the expenses and disbursements paid and incurred by the several justices of the supreme court, who are designated as justices of the appellate division of that court.

Section 1. Every justice of the supreme court, who has been, or shall hereafter be, designated as a presiding or associate justice of any of the appellate divisions of the supreme court of this state, except in the first department, and who resides in a county other than that in which the court to which he is assigned is held, shall be repaid the actual and necessary expenses and disbursements that he shall pay or incur while absent from the county in which he resides, in the performance of his duties as such justice, including his expenses in going to and returning from the place where such court is held, not to exceed the sum of twenty-five hundred dollars in any year.

§ 2. Any justice who is entitled to reimbursement for his expenses and disbursements under the provisions of this act, shall make a statement of the expenses and disbursements so paid and incurred by him and duly verify the same, which shall be presented to the comptroller for audit, and the amount audited by him shall be paid by the treasurer out of any moneys in his hands not otherwise appropriated.

§ 3. The disbursements authorized under this act shall be paid from the first day of January, eighteen hundred and ninety-six.

L. 1896, ch. 391 — An act giving authority to the governor of the state to cede jurisdiction to the United States over certain sites in the state of New York for light-houses and other public works of the United States.

Section 1. The consent of the state of New York is hereby given to the purchase by the government of the United States, and under the authority of the same, of any tract, piece or parcel of land from any individual or individuals, bodies politic or corporate within the boundaries of this state, situate upon or adjacent to the navigable waters thereof, for the purpose of erecting thereon light-houses, beacons, light-house keepers' dwellings, works for improving navigation, post-offices, custom-houses, fortifications, and all deeds, conveyances or other papers relating to the title thereof shall be recorded in the office of the register or county clerk of the county where the said lands are situated.

§ 2. Whenever the United States is desirous of purchasing or acquiring the title to any tract, piece or parcel of land within the boundaries of this state for any of the purposes aforesaid, and can not agree with the owner or owners thereof as to the purchase thereof, or if the owners of any of said lands are unknown, infants, of unsound mind, or nonresidents, or if for any other reason a perfect title can not be made to said lands, or any part thereof, the United States, by an agent authorized under the hand and seal of any head of an executive department of the government of the United States, is authorized to apply to the supreme court of the state, in and for the county within which the said lands are situated, to have the said lands condemned for the use and benefit of the United States, under the provisions of the statutes of this state applying to condemnation of lands.

§ 3. Whenever the United States, by any agent authorized under the hand and seal of any head of an executive department of the government of the United States, shall cause to be filed and recorded in the office of the secretary of state of the state of New York, certified copies of the record or transfer to the United States of any tracts or parcels of land within this state, which have been acquired by the United States for any of the purposes aforesaid, together with maps or plats and descriptions of such

lands by metes and bounds, and a certificate of the attorney-general of the United States that the United States is in possession of said lands and premises for either of the works or purposes aforesaid, under a clear and complete title, the governor of this state is authorized, if he deems it proper, to execute in duplicate, in the name of the state and under its great seal, a deed or release of the state ceding to the United States the jurisdiction of said tracts or parcels of land as hereinafter provided.

§ 4. The said jurisdiction so ceded shall be upon the express condition that the state of New York shall retain a concurrent jurisdiction with the United States on and over the property and premises so conveyed, so far as that all civil and criminal process, which may issue under the laws or authority of the state of New York, may be executed thereon in the same way and manner as if such jurisdiction had not been ceded, except so far as such process may affect the real or personal property of the United States.

§ 5. The said property shall be and continue forever thereafter exonerated and discharged from all taxes, assessments and other charges, which may be levied or imposed under the authority of this state; but the jurisdiction hereby ceded and the exemption from taxation hereby granted, shall continue in respect to said property so long as the same shall remain the property of the United States, and be used for the purposes aforesaid, and no longer.

§ 6. One of the deeds or leases so executed in duplicate shall be delivered to the duly authorized agent of the United States, and the other deed or release shall be filed and recorded in the office of the secretary of state of the state of New York; and said deed or release shall become valid and effectual only upon such filing and recording in said office.

§ 7. The secretary of state shall cause to be printed in the session laws of the year succeeding the filing in his office of said deed, a statement of the date of the application of the United States for said deed and a copy of the description of the lands so conveyed or ceded, together with the date of the recording of said deed in the office of the said secretary of state.

§ 8. This act shall not apply to the county of Orange.

L. 1896, ch. 423 — An act to preserve forever the New York and Albany post road as a state public highway.

Section 1. The old established road along the valley of the Hudson river from the city of New York to the city of Albany, known as the Albany post road, shall be a public highway for the use of the traveling public forever.

§ 2. The said highway shall be kept open and free to all travelers, and shall not be obstructed in any way by any obstacle to free travel.

§ 3. No trustees of any village or corporation of any city upon its route, or board of commissioners of highways of towns, or any other person or board whatever, shall have any power or authority to authorize or license the laying of any railroad track upon said highway, except to cross the same, and any such action shall be void and of no effect.

§ 4. This act shall not apply to any portion of said road within the city of New York, nor shall it apply to the road of the president, directors and company of the Rensselaer and Columbia turnpike, nor to the villages, of Sing Sing or Peekskill, in Westchester county.

L. 1896, ch. 434 — An act in relation to a library for the appellate division of the supreme court for the third department.

Section 1. There is hereby appropriated, and shall be paid by the state treasurer upon the warrant of the state comptroller to the presiding justice of the appellate division of the supreme court of the state of New York for the third department, the sum of five thousand dollars, or so much thereof as said presiding justice shall certify to be necessary for the purpose of purchasing books for a law library for the said appellate division of the supreme court of the third department. The books so purchased shall constitute the law library for the appellate division of the supreme court of the third department, and shall be under the custody and control of the justices of said court.

L. 1896, ch. 438 — An act to legalize the official acts of certain justices of the peace and authorizing justices of the peace to execute and file official bonds.

Section 1. The official acts of every justice of the peace heretofore done and performed, duly elected or appointed to office, so far as such official acts may be affected, impaired or ques-

tioned, by reason of the failure of any such justice to take and subscribe the official oath, or to give an official bond as required by law, are hereby legalized, ratified and confirmed, and any justice of the peace heretofore elected or appointed to the office, who has neglected to take the oath of office or file an official bond within the time prescribed by law, may take such oath and file such bond within twenty days from and after the passage of this act, and the same shall have all the force, effect and validity as if the same had been done within the time required by law.

§ 2. Nothing in this act contained shall affect any suit or proceeding now pending.

L. 1896, ch. 440 — An act to facilitate the identification of criminals.

Section 1. The superintendent of state prisons shall cause the prisoners in the state prisons therein confined at the time this act takes effect, and all prisoners thereinafter received under sentence to be measured and described in accordance with the system commonly known as the Bertillon method for the identification of criminals. The said superintendent shall cause such measurements to be made by a person or persons in the official service of the state, and shall prescribe rules and regulations for keeping accurate records of such measurements at such prisons and in duplicate at his office in Albany and for classifying and indexing the same. It shall also be the duty of the officials having charge of the New York state reformatory af Elmira, and of the penitentiaries in which prisoners shall be confined, or shall be hereafter received under sentence, to cause said prisoners to be measured and described in accordance with said Bertillon system by such person or persons in the official service of the state or of any such county or institution as may be designated by the superintendent of state prisons for the purpose, which measurements shall be made according to the rules and methods prescribed by the superintendent of state prisons. And it shall be the duty of the officials in charge of said New York state reformatory at Elmira, and of such penitentiaries to cause duplicate records of such measurements to be transmitted to the superintendent of state prisons to be by him indexed and classified according to said Bertillon system.

§ 2. The necessary expenses incurred by the superintendent of state prisons in indexing and classifying prisoners, as provided

in this act, shall be payable by the treasurer from the moneys appropriated for the maintenance and support of the several state prisons, on the warrant of the comptroller, and on bills approved by the superintendent of state prisons, but such expenses shall not exceed twelve hundred dollars in any one year.

L. 1896, ch. 444 — An act to provide for the acquiring of lands for military purposes.

Section 1. Whenever the adjutant-general of the state shall be unable to agree with the owner or owners of any real estate, within a distance of three miles from the state camp, and outside the limits of any incorporated village, required for the purpose of a military road or other military purposes, for the purchase thereof, he shall have the right to acquire the same in the manner, and by the like proceedings as are authorized and provided by chapter twenty-three of the code of civil procedure, and for that purpose the same shall be construed as applicable to said adjutant-general, as far as may be, in like manner as if he were named therein.

L. 1896, ch. 446 — An act to authorize electric light companies in towns or villages of this state to acquire real estate.

Section 1. Any electric light company in any town or village in this state having a contract with any town or incorporated village for the lighting of streets, parks, squares or public buildings in any town or village, shall have the right and is hereby vested with the power and authority to acquire such real estate as may be necessary for the purposes of its incorporation, or acquire the right of way through any property in the same manner as is now vested by law in water-work companies. Such real estate or right of way to be acquired in the manner and form prescribed by the general condemnation law of this state.

L. 1896, ch. 448 — An act for the prevention of cruelty to animals, and empowering certain societies for the prevention of cruelty to animals to do certain things.

Section 1. Every person who owns or harbors one or more dogs within the corporate limits of any city having a population of more than twenty thousand and less than eight hundred thou-

sand, where a duly incorporated society exists, or may hereafter exist, for the prevention of cruelty to animals, except in the city of Buffalo, shall procure a yearly license for each animal, paying the sum of one dollar for each one, as hereinafter provided; in applying for such license the owner shall state in writing the name, sex, breed, age, color and markings of the dog for which a license is to be procured.

§ 2. Licenses granted under this act shall date from the first day of May in each year, and must be renewed prior to the expiration of the term by the payment of one dollar for each renewal.

§ 3. Each certificate of license or renewal shall state the name or address of the owner of the dog, and also the number of such license or renewal.

§ 4. Every dog so licensed shall, at all times, have a collar about its neck with a metal tag attached thereto, bearing the number of the license stamped thereon. Such tag shall be supplied to the owner with the certificate of license and shall be of such form and design as the society empowered to carry out the provisions of this act shall designate; duplicate tags may be issued only on proof of loss of the original, and the payment of the sum of one dollar therefor.

§ 5. Dogs not licensed pursuant to the provisions of this act shall be seized, and if not redeemed within forty-eight hours, may be destroyed or otherwise disposed of at the discretion of the society empowered and authorized to carry out the provisions of this act.

§ 6. Any person claiming any dog, seized under the provisions of this act, and proving ownership thereof, shall be entitled to resume possession of the animal on the payment of the sum of two dollars; provided, however, that such claim shall be made before the expiration of the forty-eight hours provided in section five.

§ 7. The incorporated society, organized for the prevention of cruelty to animals, and having jurisdiction in either of such cities, is hereby empowered and authorized to carry out the provisions of this act; and such society is further authorized to issue licenses and renewals, and to collect the fees for such, as is herein prescribed, which fees are to be used by such society towards defray-

ing the cost of carrying out the provisions of this act and maintaining a shelter for lost, strayed or homeless animals, and for its own purposes.

§ 8. Any person or persons who shall hinder, molest or interfere with any officer or agent of such society while in the performance of any duty enjoined by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned for not less than ten days or more than thirty days, or be punished by both such fine and imprisonment.

§ 9. None of the provisions of this act shall apply to dogs owned by nonresidents passing through any city, nor to dogs brought to any city and entered for exhibition at any dog show.

§ 10. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

L. 1896, ch. 466 — An act to authorize the designation of an employe to act as an accountant and transfer officer in the office of the state treasurer.

Section 1. The treasurer is hereby authorized to designate from the employes of his office a person who shall act as an accountant and transfer officer in his department who shall give to the treasurer a bond in such penalty as he may deem secure, and who shall keep the books of the department, the records of, and have power to sign all transfers of securities required by law to be made by the superintendent of the insurance department, and the superintendent of the banking department, and shall have power, in the absence of the treasurer and deputy, to sign receipts and indorse deposits.

L. 1896, ch. 467 — An act to authorize the transfer of certain records of the commissioners of emigration of the state of New York to the United States bureau of immigration.

Section 1. On the written request of the United States bureau of immigration, the regents of the university of the state of New York are hereby authorized and directed to transfer and deliver to the said United States bureau of immigration all the records heretofore deposited in the state library by the commissioners of emigration of the state of New York.

Ch. 480.

L. 1896, ch. 480 — An act authorizing the state engineer and surveyor to continue to co-operate with the director of the United States geological survey in making a topographic survey and map of the state of New York, and making an appropriation therefor.

Section 1. In order to continue the execution and speedy completion of a topographic survey and map of this state, the state engineer and surveyor is hereby authorized to confer with the director of the United States geological survey and to accept the co-operation of the United States with this state in the execution of topographic survey and map of this state, which is hereby authorized to be made; and the said state engineer and surveyor shall have the power to arrange with the said director, or other authorized representative of the United States geological survey, concerning the details of said work, the method of its execution and the order in point of time in which these surveys and maps of different parts of the state shall be completed; provided that the said director of the United States geological survey shall agree to expend on the part of the United States upon said work a sum equal to that hereby appropriated for this purpose. In arranging details heretofore referred to, the state engineer and surveyor shall, in addition to such other provisions as he may deem wise, require that the maps resulting from this survey shall be similar in general design to the West Point sheet edition of October, eighteen hundred and ninety-two, made by the United States geological survey, shall show the location of all roads, railroads, streams, canals, lakes, and rivers, and shall contain contour lines showing the elevation and depression for every twenty feet in vertical interval of the surface of the country; that the resulting map shall fully recognize the co-operation of the state of New York, and that as each manuscript sheet of the map is completed, the state engineer and surveyor shall be furnished by the United States geological survey with photographic copies of the same and as the engraving on each sheet is completed the state engineer and surveyor shall be furnished by the said director with transfers from the copper plates of the same.

§ 2. The sum of ten thousand dollars, or so much thereof as may be necessary, is hereby appropriated for the purposes specified in this act, out of any moneys in the treasury not otherwise appropriated, to be paid by the treasurer upon the warrant of the comptroller to the order of the state engineer and surveyor.

L. 1896, ch. 481 — An act conferring jurisdiction on the state board of claims to hear, audit and determine the claims of the several counties for the value of county insane asylums.

Section 1. The board of supervisors of any county owning a building or buildings which were used solely as a county insane asylum for a period of not more than fifteen years immediately prior to the time of the transfer to the state of the care of the insane of such county, pursuant to chapter one hundred and twenty-six of the laws of eighteen hundred and ninety and the acts amendatory thereof and supplemental thereto, and which asylum has not been purchased by or transferred to the state in pursuance of law, may, within two years after this act takes effect, present to the state board of claims a claim for the value of such building or buildings at the time of the actual transfer to the state of the insane of such county. Jurisdiction is hereby conferred upon the state board of claims to hear, audit and determine such claim, and award to the county the amount to which such board may deem it justly entitled. In estimating such amount, the board of claims shall determine the value of such building or buildings at the time of such transfer of the insane, but may also take into account the use to which such building or buildings have been put by the county since such time, their availability for county purposes other than the care of the insane and the probability of their use for such purposes by the county in the future.

L. 1896, ch. 530 — An act to prohibit the use of soft coal by public institutions maintained by the state within any city of the second class.

Section 1. No public institution maintained by this state within the corporate limits of any city of the second class shall use or burn bituminous coal in the operation of any of its departments, provided that the local ordinances of any such city forbid the use thereof.

L. 1896, ch. 548 — An act to repeal certain acts and parts of acts.

Section 1. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed. Such repeal shall not revive a law repealed by any law hereby repealed, but shall include all laws amendatory of the laws hereby repealed.

§ 2. Saving clause.— The repeal of a law or any part of it specified in the annexed schedule shall not affect or impair any act done or right accruing, accrued or acquired or penalty, forfeiture or punishment incurred prior to the time when this act takes effect under or by virtue of the laws so repealed, but the same may be asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such laws had not been repealed; and all actions or proceedings, civil or criminal, commenced under or by virtue of the laws so repealed and pending on the first day of June, eighteen hundred and ninety-six, may be prosecuted and defended to final effect in the same manner as they might under the laws then existing unless it shall be otherwise specially provided by law.

SCHEDULE OF LAWS REPEALED.

Revised Statutes....	Part I, ch. 2, tit. 2..	All.
Revised Statutes....	Part I, ch. 2, tit. 6..	All.
Revised Statutes....	Part I, ch. 9, tit. 5..	§ 15.
Revised Statutes....	Part I, ch. 9, tit. 5..	§ 54.
Revised Statutes....	Part I, ch. 9, tit. 7..	§§ 1, 4-9.
Revised Statutes....	Part I, ch. 9, tit. 8..	§§ 1-5, 9.
Revised Statutes....	Part I, ch. 15, tit. 3..	All.
Revised Statutes....	Part I, ch. 20, tit. 8..	§§ 61-63, 65-68, 73-77.
Revised Statutes....	Part, I, ch. 20, tit. 15..	§§ 13, 14.
Revised Statutes....	Part III, ch. 1, tit. 5..	§§ 21, 24, 25.
Revised Statutes....	Part III, ch. 2, tit. 4..	§ 231.
Revised Statutes....	Part III, ch. 10, tit. 3..	§§ 1, 41, 42, 51.
Revised Statutes....	Part III, ch. 10, tit. 4..	§§ 1, 2.
Revised Statutes....	Part IV, ch. 1, tit. 6..	§§ 34, 41.
Revised Statutes....	Part IV, ch. 1, tit. 7..	§ 18.

LAWS OF—	Chapter.	Sections.
1828.....	137.....	All.
1830.....	259.....	All.
1831.....	203.....	4.
1832.....	246.....	All.
1833.....	56.....	1-3, 5-7.
1834.....	78.....	All.
1835.....	45.....	All.

LAWS OF—	Chapter.	Sections.
1835	123	1.
1835	272	1.
1835	299	All.
1836	384	All.
1836	532	3.
1839	375	All.
1840	21	All.
1841	221	All.
1841	223	All.
1843	57	3.
1843	205	All.
1844	255	2, 4, 8.
1845	85	2, 4, 5, 6, 7.
1845	180	22, 28.
1847	69	All.
1847	170	All.
1847	276	1-7.
1847	455	17, 19, 25, 26.
1847	470	All.
1848	58	All.
1848	72	1-2.
1848	188	All.
1848	321	All.
1849	124	All.
1849	125	20, 21.
1850	155	All.
1851	52	All.
1851	163	All.
1851	217	All.
1851	232	All.
1851	488	All.
1852	46	All.
1852	282	All.
1853	142	1, 2.
1853	218	All.
1853	338	4.
1853	406	All.
1853	467	All.
1853	498	All.

Ch. 548.

LAWS OF—	Chapter.	Sections.
1853	619	All.
1854	188	All.
1854	198	All.
1855	64	All.
1855	269	All.
1855	471	4.
1855	556	All.
1857	243	All.
1857	267	All.
1857	367	All.
1857	482	All.
1857	564	All.
1857	615	All.
1858	261	All.
1858	282	6, 8.
1859	170	All.
1860	57	All.
1860	254	All.
1860	305	All.
1860	522	1, 2.
1861	307	All.
1863	412	All.
1863	456	All.
1864	387	All.
1864	391	All.
1864	583	All.
1865	137	All.
1865	170	6.
1865	296	All.
1865	712	All.
1866	95	All.
1866	369	All.
1866	737	All.
1866	783	All.
1867	515	All.
1867	557	All.
1867	971	All.
1868	793	All.
1868	857	All.

LAWS OF—	Chapter.	Sections.
1869	322	All.
1869	361	All.
1870	47	All.
1870	69	All.
1870	86	1-7, 9.
1870	203	9.
1870	242	All.
1870	408	15.
1870	470	1, 18.
1870	539	26-28.
1870	548	All.
1871	576	All.
1871	610	All.
1872	48	All.
1872	143	All.
1872	320	All.
1872	685	All.
1873	19	4.
1873	186	3.
1873	474	All.
1874	656	All.
1875	249	All.
1875	378	All.
1876	295	All.
1877	319	All.
1877	419	All.
1878	85	All.
1878	377	All.
1878	378	All.
1879	31	All.
1879	208	All.
1879	323	All.
1880	135	All.
1880	298	All.
1880	480	All.
1880	487	All.
1880	552	All.
1881	1	All.

LAWS OF—	Chapter.	Sections.
1881	10	All.
1881	49	All.
1881	354	1.
1881	400	1.
1881	432	All.
1881	493	All.
1881	599	All.
1881	659	All.
1882	108	All.
1882	190	All.
1882	409	68, 69.
1883	69	All.
1883	309	1-3.
1883	329	All.
1883	424	All.
1884	133	All.
1884	344	All.
1884	350	All.
1885	118	All.
1885	262	All.
1885	399	3-6.
1885	427	All.
1886	646	All.
1887	113	All.
1887	463	All.
1887	546	34.
1887	675	All.
1887	679	All.
1888	173	All.
1888	229	All.
1888	416	All.
1889	110	All.
1889	136	All.
1889	404	All.
1890	125	All.
1890	281	All.
1891	38	All.
1891	87	All.
1891	119	All.

LAWS OF—	Chapter.	Sections.
1891	206	1.
1891	223	All.
1891	354	3, 4, 5.
1891	372	All.
1892	214	All.
1892	215	All.
1892	236	All.
1892	332	All.
1892	398	All.
1892	425	All.
1892	623	All.
1892	709	All.
1893	250	All.
1893	455	All.
1895	774	All.

L. 1896, ch. 586 — An act to provide for the collection of historical and ethnologic records and relics of the American Indians of the state of New York, and making an appropriation therefor.

Section 1. There shall be made, as the Indian section of the state museum, as complete a collection as practicable of the historical, ethnographic and other records and relics of the Indians of the state of New York, including implements or other articles pertaining to their domestic life, agriculture, the chase, war, religion, burial and other rites or customs, or otherwise connected with the Indians of New York.

§ 2. The trustees of the state museum shall appoint on its staff a competent curator, without salary, to make and arrange this Indian collection, and for his necessary expenses, and for collecting or buying specimens for the Indian collection, there shall be paid by the treasurer, on the warrant of the comptroller, from any money not otherwise appropriated, not to exceed five thousand dollars.

L. 1896, ch. 588 — An act to regulate the keeping of hotels, taverns, inns, boarding and lodging-houses.

Section 1. The proprietor or manager of any hotel, tavern, inn, boarding or lodging-house shall keep a register which shall show the name, residence, date of arrival and departure of their guests,

providing such proprietor or manager shall be under a contract with a corporation, association, partnership or individual by the terms of which such corporation, association, partnership or individual is entitled to receive a percentage of the receipts from such business, which register shall be subject to the inspection of any corporation, association, partnership or individual who shall be under a contract with such proprietor or manager by the terms of which such corporation, association, partnership or individual is entitled to receive a percentage of the receipts from such business.

L. 1896, ch. 589—An act to authorize the state commissions or boards to acquire land by condemnation, and to amend the code of civil procedure relating to condemnation proceedings.

Section 1. The people of the state of New York and the several commissions or boards, boards of managers or trustees in charge or having control of any of the charitable or other institutions of the state, are hereby authorized to acquire under the provisions of title one of chapter twenty-three of the code of civil procedure, known as the condemnation law, such real estate, right or interest therein, as may be necessary for the uses of the state or for the construction, maintenance and accommodation of such state institutions if unable to agree with the owner thereof for its purchase. Unless otherwise provided by law, the proceedings for the purpose of acquiring such real estate, right or interest therein, shall be instituted and maintained in the name of the people of the state of New York, by the attorney-general or by such counsel as the governor or attorney-general may designate for that purpose, upon the certificate of such commission or board as to the necessity of acquiring such real estate, right or interest therein, approved and indorsed by the governor.

§ 2. Section thirty-three hundred and fifty-eight of the code of civil procedure is hereby amended so as to read as follows:

§ 3358. The term "person," when used herein, includes a natural person and also a corporation, joint-stock association, the state and a political division thereof, and any commission, board, board of managers or trustees in charge or having control of any of the charitable or other institutions of the state; the term "real property," any right, interest or easement therein or

appurtenances thereto; and the term "owner," all persons having any estate, interest or easement in the property to be taken, or any lien, charge, or incumbrance thereon. The person instituting the proceedings shall be termed the plaintiff; and the person against whom the proceeding is brought, the defendant.

§ 3. Subdivision one of section thirty-three hundred and sixty of the code of civil procedure is hereby amended so as to read as follows:

1. His name, place of residence, and the business in which engaged; if a corporation or joint-stock association, whether foreign or domestic, its principal place of business within the state, the names and places of residence of its principal officers, and of its directors, trustees or board of managers, as the case may be, and the object or purpose of its incorporation or association; if a political division of the state, the names and places of residence of its principal officers; and if the state or any commission or board of managers or trustees in charge or having control of any of the charitable or other institutions of the state, the name, place of residence of the officer acting in its or their behalf in the proceedings.

L. 1896, ch. 649 — An act to validate and confirm certain consents heretofore given by the local authorities of cities of the first and second class in the construction, operation and maintenance of street surface railroads therein.

Section 1. All consents given since December first, eighteen hundred and ninety-five, and prior to February first, eighteen hundred and ninety-six, by the local authorities of any city of the first or second class, to the construction, operation and maintenance of a street surface railroad in any such city by a railroad corporation which has not complied with the provisions of section fifty-nine of the railroad law or has failed to obtain the certificate therein provided for, are hereby validated and confirmed, and any such corporation may construct, operate and maintain a street surface railroad over, along and upon the streets, avenues, highways and public places described in such consent upon obtaining the consent of the owners of property bounded on such streets, avenues, highways or public places as provided by law.

L. 1896, ch. 657 — An act conferring jurisdiction upon the board of fisheries, game and forest commissioners to hear and determine any controversies regarding the leasing of lands under water for the cultivation of shell fish.

Section 1. Jurisdiction is hereby conferred upon the board of fisheries, game and forest commissioners to hear any and all controversies which have arisen regarding the leasing of lands under water for the purpose of the cultivation of shell fish, and to determine the same, upon such terms as may be just and equitable.

§ 2. The said board of fisheries, game and forest commissioners, in addition to the powers and duties heretofore conferred upon it by law, shall have power to sue for and collect, and to compromise, compound and satisfy any and all rents which now are in arrears, from lands under water leased by the state for the purpose of shell fish cultivation, and to make such rebates, for the rental of such lands, as in their judgment shall seem just and equitable; provided, however, that no such rental shall be reduced to less than twenty-five cents per acre per annum for each acre leased.

L. 1896, ch. 663 — An act to amend chapter six hundred and seventy-three of the laws of eighteen hundred and ninety-four, entitled "An act to authorize and empower the board of trustees of villages incorporated under the act entitled 'An act for the incorporation of villages,' passed April twenty, eighteen hundred and seventy, and acts amendatory thereof and supplemental thereto, to contract with lighting companies organized under the laws of this state for lighting the streets and public grounds of said village "

Section 1. The board of trustees of any village in this state incorporated under an act, entitled "An act for the incorporation of villages," passed April twenty, eighteen hundred and seventy, and acts amendatory thereof and supplemental thereto, shall have the power, and they are hereby authorized and empowered to contract for a term of one year or more with any lighting company organized under the laws of this state, or with any person or persons, for lighting the streets and public grounds of such village, and the amount of such contract agreed to be paid shall be annually raised as a part of the expenses of such village, and shall be levied, assessed and collected in the manner that other expenses of said village are raised, and when

collected shall be kept separate from other funds of such village, and shall be paid over to such lighting company, person or persons, by such trustees, according to the terms of any such contract; and any such contract entered into by the board of trustees of any such village shall be valid and binding upon such village; providing, however, that no such contract shall be made for a longer period than five years nor for a greater sum in the aggregate than two and one-half mills for every dollar of the taxable property of said village per annum, unless the proposition for the same be submitted to a vote of the electors of such village in the manner provided by sections four and five of title four of chapter two hundred and ninety-one of the laws of eighteen hundred and seventy, and approved by a majority of the voters entitled to vote and voting on such question at an annual election or at a special election duly called.

§ 2. All of the counties in this state are hereby exempted from the provisions of this act except the counties of Rockland and Westchester.

L. 1896, ch. 738 — An act allowing stone-cutters, paving-cutters, block-breakers and quarrymen to file notice of lien for work, labor and services rendered in excavating and dressing sandstone, granite, bluestone or marble.

Section 1. Every person employed in any of the sandstone, granite, bluestone or marble quarries, yards or docks, wherein granite, sandstone, bluestone or marble is dressed, cut or quarried in this state, at any time within thirty days after the completion of the labor of excavating, quarrying, dressing or cutting of sandstone, granite, bluestone or marble, may file a notice in writing, specifying the amount due for such labor, the kind of labor performed, the person or corporation employing the claimant, the dimensions and a brief description of the quantity of granite, bluestone, marble or sandstone against which such claim is made and upon which such service was rendered, in the town clerk's office of the town, or the place wherein chattel mortgages are required to be filed by law, wherein such quarry is located. Such notice of lien shall operate as a lien upon the sandstone described therein upon which the work, labor and service was rendered from the time of filing the same.

§ 2. Such lien shall be foreclosed in the same manner as specified in article two of title two of chapter fourteen of the code of civil procedure, entitled "Action to foreclose chattel."

§ 3. A copy of the notice so filed shall be served upon the person or corporation against whom such claim shall exist, or the person in charge of the quarry, yards or docks, wherein such service shall be rendered within five days after the filing of the same.

§ 4. The town clerk or officer filing such notice of lien, herein provided for, shall be entitled to a fee of twelve cents for filing the same. Said clerk shall enter in the book used for making entries of filing a chattel mortgage a memorandum of the filing of the lien herein provided for.

§ 5. Any person or corporation against whom any such lien is filed, as herein provided for, may secure a certificate from the officer with whom such lien is filed discharging the property therein described from the lien and effect of the same, upon the person or corporation filing with the said officer an undertaking signed by one or more sureties who shall justify in an amount equal to twice the amount of said lien, to be approved of by the officer with whom such lien is filed, conditioned for the payment of the amount of such lien and costs and charges of collecting the same.

§ 6. Nothing herein contained shall be construed to extend the lien herein provided for to any material which shall have become a part of any building or structure or cease to be the property of the person or corporation for whom such labor was performed, and in no case shall the owner of any quarry, yard or dock be liable to pay by reason of all the liens filed pursuant to this act a greater sum than the price stipulated and agreed to be paid in the contract for the excavating, quarrying, dressing or cutting of such stone, and remaining unpaid at the time of the filing of such lien, or in case there is no contract, than the amount of the value of such labor then remaining unpaid.

L. 1896, ch. 802 — An act for the establishment of a state reservation upon and along the Saint Lawrence river in the state of New York.

Section 1. All that part of the river Saint Lawrence lying and being within the state of New York, with the island* therein, is

* So in the original.

hereby constituted an international park which shall be known as "The State Reservation on the Saint Lawrence."

§ 2. The said state reservation on the Saint Lawrence shall be under the control and management of the board of fisheries, game and forest, who shall have the power to make and enforce ordinances, by-laws, rules and regulations for the management of the property of the state within the borders of said reservation, and for the orderly transaction of business not inconsistent with the laws of the state; to appoint a superintendent who shall be subject to the order of said board, who shall have the authority of a fisheries and game protector, and of a police constable in criminal cases within the limits of the state reservation.

§ 3. It shall be the duty of the said board of fisheries game and forest to report to the next legislature of this state what laws, in their opinion, should be enacted for the government and control of said state reservation, so as to make the same the most useful to the people of the state as a part of an international park upon the Saint Lawrence river comprising the whole of said river.

L. 1896, ch. 820 — An act authorizing boards of supervisors to appoint commissioners for the equalization of taxes.

Section 1. The board of supervisors of any county of the state may by the concurring vote of a majority of all the supervisors elected to such board, resolve to appoint three persons to be commissioners of equalization of such county. They shall thereupon appoint such commissioners, two of whom shall be residents of such county and not members of the board of supervisors, and the third commissioners shall not be a resident of or a taxpayer in such county, but shall reside in the judicial district in which such county is situated. If there be one or more cities in such county one of such commissioners shall be a resident of such city or cities and one shall be a resident of the towns in such county outside of such city or cities. The commissioner appointed from such city or cities shall be named by the supervisors representing such city or cities, and the commissioner appointed from the towns outside of such city or cities shall be named by the supervisors representing such towns. Both such

commissioners, including the third commissioner appointed from the judicial district outside of such county, shall be confirmed by a two-thirds vote of all the members of the board of supervisors. If, after such board has resolved to appoint such commissioners of equalization, they are unable to agree upon the commissioners to be appointed as provided by this section, and such commissioners are not appointed before the first day of July, succeeding the time when such resolution was adopted, the clerk of such board shall apply to the county judge of such county certifying to him the fact that such resolution was adopted and such commissioners have not been appointed pursuant thereto and such county judge shall appoint the commissioners subject to the provisions of this section relating to their places of residence. The term of office of each such commissioners shall be three years. Not more than one commissioner shall reside in the same town or city, and if a commissioner remove to a town or city in which another commissioner resides, the office of the commissioner so removing shall thereon become vacant. Such appointments shall be so made that not more than a majority of the commissioners belong to the same political party, and the other commissioner shall be chosen from the other political party polling in such county at the last general election either the highest or the next highest number of votes. If the office of any commissioner become vacant before the expiration of his term, such vacancy shall be filled, for the unexpired term, by the appointment of a person of the same political faith as his predecessor at the time of his appointment. Each commissioner shall be paid by the county for his services, a sum to be fixed by the board of supervisors, not exceeding the rate of four dollars per day, for the time necessarily and actually occupied in the performance of his duties, and his necessary and reasonable expenses incurred while absent from his home in the discharge of his duties, but the total amount paid to any commissioner for his services and expenses in any one year shall not exceed three hundred dollars.

§ 2. Between the first day of September and the time of the annual meeting of the board of supervisors in each year the commissioners shall examine the assessment-rolls of the several

towns in their county for the purpose of ascertaining whether the valuations in one town or ward bear a just relation to the valuations in all the towns and wards in the county, and they may increase or diminish the aggregate valuations of real estate in any town or ward by adding or deducting such sum upon the hundred as may, in their opinion, be necessary to produce a just relation between all the valuations of real estate in the county, but they shall in no instance reduce the aggregate valuations of all the towns and wards below the aggregate valuations thereof as made by the assessors. If the office of any commissioner become vacant before the expiration of his term such vacancy shall be filled for the unexpired term by the appointment of a person of the same political faith as his predecessor at the time of his appointment.

§ 3. On or before the fourth day of the annual meeting of the board of supervisors in each year the commissioners shall file with the clerk of such board of supervisors their report of the equalized valuations of real estate, signed by a majority of such commissioners, and the same shall be binding and conclusive on such board of supervisors as an equalization of the assessments of real estate for such year.

L. 1896, ch. 823 — An act in relation to public celebrations and expositions in cities.

Section 1. The mayor of any city of the first class may, in his discretion, grant temporary permits for the erection of booths, stands, arches, overhead passageways, or flagstaffs for the stringing of flags or banners for other than advertising purposes, upon or over the sidewalks or streets of such city for the purpose of a public celebration, exposition, fair, or political demonstration; provided, however, that no such permit shall be granted by virtue of this act without the consent of the owners of the abutting property constituting more than one-half of the foot frontage upon both sides of such street in the block formed by the nearest cross streets on each side of such structure or erection.

L. 1896, ch. 873 — An act to insure prompt medical treatment for the sick or injured.

Section 1. In any city, county, town or village of this state wherein exists, or is hereafter created, an ambulance system,

supported wholly or partly at public expense, or which is wholly or partly under the care, management or control of the public authorities, no person in charge of an ambulance, hospital, or house or place of reception for the sick or injured, shall refuse, in answer to a call or demand for an ambulance, and which call has been answered by the attendance of an ambulance, to take such person or persons for whom a call may be made to the hospital or place of reception for the sick or injured from which the ambulance came, for examination and treatment by the house authorities of the said hospital or place of reception for the sick or injured.

§ 2. Any person or persons neglecting or refusing to comply with the provisions of this act shall be guilty of a misdemeanor.

§ 3. This act shall apply to the drivers of or the physician or physicians in charge of an ambulance, and shall take effect immediately.

L. 1896, ch. 881 — An act to facilitate and to encourage commerce upon the canals of this state.

Section 1. Any person or persons, joint company or stock corporation owning or leasing, in whole or in part, any floating elevator used for loading grain, coal or sand, shall, upon application to and in the discretion of the superintendent of public works, be assigned a place for and permitted to keep said floating elevator in the waters, basins or canals of this state at such point as may be most convenient for and for such period of time as may be necessary for the transaction of the business of loading or unloading grain, coal or sand shipped or to be shipped on the canals; provided, however, that no obstruction to the free and uninterrupted use of the canals by boats navigating thereon shall be permitted. While such elevators are in operation, there shall be used in connection therewith an apron or other device to prevent such material from falling into such waters, basins or canals.

L. 1896, ch. 893 — An act to provide for the appointment of clerks to certain justices of the supreme court of the fifth judicial district.

Section 1. Each of the resident trial justices of the supreme court in the fifth judicial district, except those resident in cities in said district in which there is now a resident supreme court stenographer, may appoint, and at pleasure remove, a confidential

clerk to said justice, by an instrument in writing, under his own hand, to be filed in the office of the secretary of state. Each of said clerks shall receive an annual salary of eighteen hundred dollars, to be paid by the comptroller of the state in equal quarterly payments, upon the certificate of said justice, and said salary shall be a charge upon the fifth judicial district.

L. 1896, ch. 900 — An act authorizing the sale of ale and beer upon the premises of the New York State Soldiers and Sailors' Home, of Bath, New York, and providing for the expenditure of the net proceeds therefrom.

Section 1. The trustees of the New York Soldiers and Sailors' Home at Bath, New York, upon complying with the provisions of chapter one hundred and twelve, laws of eighteen hundred and ninety-six, of the state of New York, are hereby authorized to sell ale and beer to the members of said home, upon the premises of said home, under such rules and regulations as said trustees shall prescribe, and the provisions of clause one, section twenty-four and clause six of section thirty of said chapter one hundred and twelve of the laws of eighteen hundred and ninety-six shall not apply to such New York State Soldiers and Sailors' Home.

§ 2. The said trustees shall expend the net proceeds of such sales for the support of the library and reading-room of said home and for such other purposes as they shall deem best for the comfort and amusement of the members of said home.

§ 3. All acts and parts of acts inconsistent with this act are hereby repealed.

L. 1896, ch. 908 — An act in relation to taxation, constituting chapter twenty-four of the general laws.

[This is the Tax Law, set out in full, ante, pp. 3214–3331.]

L. 1896, ch. 909 — An act in relation to the elections, constituting chapter six of the general laws.

[This is the Election Law, set out in full, ante, pp. 3125–3213.]

L. 1896, ch. 910 — An act to authorize the recovery of an assessmen paid for a local improvement, which assessment has been annulled.

Section 1. Whenever an assessment for a local improvement has been annulled by the judgment or order of any court any sum of money which has been heretofore, or shall be hereafter paid thereon, may be refunded with interest from the time of such

payment. If not so refunded within one year, from the time of such judgment or order annulling such assessment, an action may be maintained to recover such sum with interest thereon.

L. 1896, ch. 914 — An act to provide for the care of aged, decrepit, and mentally enfeebled persons who are not insane.

Section 1. It shall be lawful for the state board of charities, within ten days after the passage of this act, to exercise supervision over all aged, decrepit and feeble-minded persons who are not proper subjects for care and treatment in a hospital for the insane, but who, on application by themselves, or by their relatives, or if without relatives, then by their friends or legal guardians, seek to obtain admission into any homes, retreats, or other asylums which may be authorized under the provisions of this act, to receive and administer to their necessities in a safe and humane manner.

§ 2. The state board of charities, in the exercise of such official supervision, is hereby empowered to license any home, retreat, or other asylum devoted to the sole purpose of keeping and caring for such aged, decrepit or mentally enfeebled persons whenever in the judgment of said board such home, retreat or asylum possesses the necessary equipment in officers and attendants, together with suitable domestic accommodations in all other respects, for the safe and humane maintenance of such patients. And the power of exercising supervision over such institutions by the state board of charities, and of visiting and inspecting them and their inmates at all times, shall be the same as now belongs to them in respect to the other institutions under their care.

§ 3. Any person not a minor may voluntarily enter such a licensed institution upon filing an application of his intention with the superintendent thereof, supported by the affidavit of two reputable physicians of the places of residence of such person, certifying to the fact that the said applicant, though aged, decrepit or mentally enfeebled, is not insane nor a proper subject for treatment in a hospital for the insane, and that he goes there with the consent of his relatives, friends, or legal guardians.

§ 4. In case such applicant be incompetent to act for himself, a similar application may be made in his behalf by any relative,

friend or legal guardian in whose charge, or by whose assistance he is maintained, and the superintendent of such institution is hereby authorized to receive him in like manner as above stated.

§ 5. Any patient upon application made to the state board of charities by him, or his friends or legal guardians, may be discharged from any such home, retreat or asylum, and placed in the care of his friends or other suitable place as the said board, in their judgment, may deem best.

L. 1896, ch. 931 — An act in relation to the labeling and marking of convict-made goods, wares and merchandise, and amending the penal code in relation thereto, and repealing certain laws.

Section 1. All goods, wares and merchandise made by convict labor in any penitentiary, prison, reformatory or other establishment in which convict labor is employed shall, before being sold, or exposed for sale, be branded, labeled or marked as hereinafter provided, and shall not be exposed for sale in any place within this state without such brand, label or mark.

§ 2. The brand, label or mark hereby required shall contain at the head or top thereof the words "convict made," followed by the year and name of the penitentiary, prison, reformatory or other establishment in which it was made, in plain English lettering, of the style and size known as great primer roman condensed capitals. The brand or mark shall in all cases, where the nature of an article will permit, be placed upon the same, and only where such branding or marking is impossible shall a label be used, and where a label is used it shall be in the form of a paper tag, which shall be attached by wire to each article, where the nature of the article will permit, and placed securely upon the box, crate or other covering in which such goods, wares or merchandise may be packed, shipped or exposed for sale. Said brand, mark or label shall be placed upon the outside of and upon the most conspicuous part of the finished article and its box, crate or covering.

§ 3. It shall be the duty of the commissioner of labor statistics and the district attorneys of the several counties to enforce the provisions of this act, and of section three hundred and eighty-four of the penal code, and when, upon complaint or otherwise, the commissioner of labor statistics has reason to believe that

this act is being violated, he shall advise the district attorney of the county wherein such alleged violation has occurred of that fact, giving the information in support of his conclusions, and such district attorney shall at once institute the proper legal proceedings to compel compliance with this act.

§ 4. It shall be lawful for any person, persons or corporation to furnish evidence as to the violation upon the part of any person, persons or corporation, and upon the conviction of any such person, persons or corporation, one-half of the fine provided for by section three hundred and eighty-four-b of the penal code, which shall be secured, shall be paid upon certificate by the district attorney to the commissioner of labor statistics, who shall use such money in investigating and securing information in regard to the violations of this act and in paying the expenses of such conviction.

[§ 5 amends § 384b of the Penal Code.]

§ 6. Chapter three hundred and twenty-three of the laws of eighteen hundred and eighty-seven, and chapter six hundred and ninety-eight, laws of eighteen hundred and ninety-four, are hereby repealed.

L. 1896, ch. 933 -- An act to protect the owners of bottles, boxes siphons, tins or kegs used in the sale of soda water, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer or other beverages, or medicines medical preparations, perfumery, oils, compounds or mixtures.

Section 1. Any and all persons and corporations engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer or other beverages or medicines, medical preparations, perfumery, oils, compounds or mixtures, in bottles, siphons, tins or kegs, with his, her, its or their name or names, or other marks or devices branded, stamped, engraved, etched, blown, impressed or otherwise produced upon such bottles, siphons, tins or kegs, or the boxes used by him, her, it or them, may file in the office of the clerk of the county in which his, her, its or their principal place of business is situated, or if such person, persons, corporation or corporations shall manufacture or bottle out of this state, then in any county in this state, and also in the office of the secretary of state, a description

of the name or names, marks or devices so used by him, her, it or them, respectively, and cause such description to be printed once in each week, for three weeks successively, in a newspaper published in the county in which said notice may have been filed as aforesaid, except that in the city and county of New York and the city of Brooklyn, in the county of Kings, such publication shall be made twice in each week for three weeks successively in two daily newspapers published in the cities of New York and Brooklyn, respectively.

§ 2. It is hereby declared to be unlawful for any person or persons, corporation or corporations, to fill with soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer, or other beverages, or with medicine, medical preparations, perfumery, oils, compounds or mixtures, any bottle, box, siphon, tin or keg so marked or distinguished as aforesaid, with or by any name, mark or device, of which a description shall have been filed and published, as provided in section one of this act, or to deface, erase, obliterate, cover up or otherwise remove or conceal, any such name, mark or device thereon, or to sell, buy, give, take or otherwise dispose of or traffic in the same without the written consent of, or unless the same shall have been purchased from the person or persons, corporation or corporations, whose mark or device shall be or shall have been in or upon the bottle, box, siphon, tin or keg so filled, trafficked in, used or handled as aforesaid. Any person or persons or corporation or corporations offending against the provisions of this section shall be deemed guilty of a misdemeanor, and shall be punished for the first offense by imprisonment not less than ten days nor more than one year, or by a fine of fifty cents for each and every such bottle, box, siphon, tin or keg so filled, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, and for each subsequent offense by imprisonment not less than twenty days nor more than one year, or by a fine of not less than one dollar, nor more than five dollars, for each and every bottle, box, siphon, tin or keg so filled, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, in the discretion of the magistrate before whom the offense shall be tried.

§ 3. The use by any person other than the person or persons, corporation or corporations, whose device, name or mark shall be or shall have been upon the same without such written consent or purchase as aforesaid, of any such marked or distinguished bottle, box, siphon, tin or keg, a description of the name, mark, or device, whereon shall have been filed and published, as herein provided, for the sale therein of soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer or other beverages, or any article of merchandise, medicines, medical preparation, perfumery, oils, compounds, mixtures or preparations, or for the furnishing of such or similar beverages to customers or the buying, selling, using, disposing of or trafficking in any such bottles, boxes, siphons, tins or kegs by any person other than said persons or corporations having a name, mark or device thereon of such owner without such written consent, or the having by any junk dealer or dealers in second-hand articles, possession of any such bottles, boxes, siphons, tins or kegs, a description of the marks, names or devices, whereon shall have been so filed and published as aforesaid, without such written consent, shall, and is hereby declared, to be presumptive evidence of the said unlawful use, purchase and traffic in of such bottles, boxes, siphons, tins or kegs.

§ 4. Whenever any person, persons or corporation mentioned in section one of this act, or his, her, its or their agent shall make oath before any magistrate that he, she, or it, has reason to believe, and does believe, that any of his, her, its or their bottles, boxes, siphons, tins or kegs, a description of the names, marks or devices whereon has been so filed and published as aforesaid, are being unlawfully used or filled, or had, by any person or corporation manufacturing or selling soda, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer or other beverages or medicine, medical preparations, perfumery, oils, compounds or mixtures, or that any junk dealer or dealer in second-hand articles, vendor of bottles, or any other person or corporation has any such bottles, boxes, siphons, tins or kegs in his, her or its possession or secreted in any place, the said magistrate must thereupon issue a search warrant to discover and obtain the same, and may also cause to

be brought before him the person in whose possession such bottles, boxes, siphons, tins or kegs may be found, and shall then inquire into the circumstances of such possession, and if such magistrate finds that such person has been guilty of a violation of section two of this act, he must impose the punishment herein prescribed, and he shall also award possession of the property taken upon such warrant to the owner thereof.

§ 5. The requiring, taking or accepting of any deposit, for any purpose, upon any bottle, box, siphon, tin or keg shall not be deemed or constitute a sale of such property, either optional or otherwise, in any proceeding under this act.

§ 6. Any person or persons, corporation or corporations, that has or have heretofore filed in the offices mentioned in section one of this act, a description of the name or names, mark or devices upon his, her, their or its property, therein mentioned, and has caused the same to be published according to the law existing at the time of such filing and publication, shall not be required to again file and publish such description to be entitled to the benefits of this act.

§ 7. All acts and parts of acts inconsistent herewith are, for the purposes of this act, hereby repealed.

L. 1896, ch. 936 — An act to afford protection against injury or death to person employed on buildings in course of construction in cities of the state.

Section 1. It shall be the duty of all contractors and owners when constructing buildings in any of the cities of the state, where the plans and specifications require the floors to be arched, between the beams thereof, or where the said floors or filling in between floors shall be of fire-proof material or brick work, to complete the said flooring or filling in as the building progresses to not less than within three tiers of beams below that on which the iron work is being erected.

§ 2. It shall be the duty of all contractors for carpenter work of buildings, in the course of construction, in any of the cities of the state, where the plans and specifications do not require the filling in between the beams of floor to be of brick or fire-proof work to lay the under flooring thereof as the building progresses on each story to not less than within two stories below the one to which the said building has been erected. Where double floors

are not used, the contractor shall be required to keep planked over the floor two stories below that one which the work is being carried on.

§ 3. It shall be the duty of all contractors for iron or steel work of buildings in the course of construction or the owners thereof, in cases where the floor beams are of iron or steel, to thoroughly plank over the entire tier of iron or steel beams on which the structural iron or steel work is being erected, except such spaces as may be reasonably required for proper construction of said iron or steel work and for the raising or lowering of materials used or to be used in the construction of the said building or such spaces as may be designated by the plans and specifications for stairways and elevator shafts.

§ 4. The chief officer, in any city, charged with the enforcement of the building laws of such city, is hereby charged with enforcing the provisions of this act.

§ 5. Any violation of the provisions of this act shall be a misdemeanor and on conviction shall be punishable by a fine, for each violation thereof, of not less than twenty-five nor more than two hundred dollars.

L. 1896, ch. 937 — An act to authorize and empower any late county treasurer of any county in the state to maintain an action for the recovery of moneys, funds or properties belonging to the county or deposited with the treasurer thereof pursuant to law, without right obtained, received, converted, disposed of or withheld by any person, association or corporation, their assigns and legal representatives.

Section 1. The county treasurer of any county in this state, within three years after he has ceased to be county treasurer, may maintain an action in any court of record in this state as late county treasurer to recover any moneys, funds or properties belonging to the county or deposited with such county treasurer pursuant to law, without right obtained, received, converted or appropriated, disposed of or withheld by any party or parties, association or corporation, their legal representatives and assigns, during the term or terms of office of such county treasurer.

§ 2. Any and all moneys, funds and properties recovered in an action brought as specified in section one of this act, shall, be paid to and deposited with the then treasurer of the county from which such moneys, funds and properties were taken.

§ 3. Upon the payment of any moneys or the depositing of any funds by a late county treasurer bringing an action, as provided for in sections one and two of this act, such late county treasurer shall be forthwith credited with the amount and value of such deposit.

§ 4. This act shall apply to all county treasurers of this state elected to office on or after the seventh day of November, eighteen hundred and eighty-two.

§ 5. This act shall not abridge or affect in anywise any action or actions now pending against any county treasurer or ex-county treasurer.

L. 1896, ch. 942 — An act relative to the supply of pure and wholesome water in certain counties in the state.

[General in form but local in fact.]

L. 1896, ch. 955 — An act for the protection and education of farmers and manufacturers in the purchase and sale of fertilizers.

Section 1. Every person who shall sell, offer or expose for sale in this state any commercial fertilizer or any material to be used as a fertilizer, the selling price of which exceeds ten dollars per ton, shall stamp on or affix to each package of such fertilizer, in a conspicuous place on the outside thereof, a plainly printed statement which shall certify as follows:

1. The number of net pounds of fertilizer in the package sold or offered for sale;

2. The name, brand, or trade mark under which the fertilizer is sold;

3. The name and address of the manufacturer of the fertilizer;

4. The chemical composition of the fertilizer expressed in the following terms:

(a) Per centum of nitrogen;

(b) Per centum of available phosphoric acid, or, in case of undissolved bone, the per centum of total phosphoric acid;

(c) Per centum of potash soluble in distilled water.

If any such fertilizer be sold, offered or exposed for sale in bulk, such printed statement shall accompany every lot and parcel so sold, offered or exposed for sale.

§ 2. It shall be a violation of the provisions of this act if the statement required by section one of this act shall be false in

regard to the number of net pounds of fertilizer in the package sold, offered or exposed for sale, or in the name, brand or trademark under which the fertilizer is sold, or in the name and address of the manufacturer of the fertilizer. It shall also be a violation of the provisions of this act if any commercial fertilizer or material to be used as a fertilizer shall contain a smaller percentage of nitrogen, phosphoric acid or potash than is certified in said statement to be contained therein, when such deficiency shall be greater than one-third of one per centum of nitrogen, or one-half of one per centum of available phosphoric acid (or one per centum of total phosphoric acid in the case of undissolved bone), or one-half of one per centum of potash soluble in distilled water.

§ 3. Before any commercial fertilizer or any material to be used as a fertilizer is sold, offered or exposed for sale in this state, the manufacturer, importer or person who causes the same to be sold, offered or exposed for sale shall file with the New York agricultural experiment station at Geneva, a certified copy of the statement prescribed in section one of this act; and, in addition, such statement shall be filed thereafter annually during the month of January.

§ 4. No person shall sell, offer or expose for sale in this state leather or its products or other inert nitrogenous material in any form, as a fertilizer or as an ingredient of any fertilizer, unless an explicit printed statement of the fact shall be conspicuously affixed to every package of such fertilizer, and shall accompany every parcel or lot of the same.

§ 5. Every person violating any of the provisions of this act shall forfeit and pay to the people of the state of New York the sum of one hundred dollars for every such violation.

§ 6. Every certificate, duly signed and acknowledged, of a chemist or other expert employed by the director of the New York agricultural experiment station at Geneva relating to the analysis of any commercial fertilizer or material to be used as a fertilizer, shall be presumptive evidence of the facts therein stated.

§ 7. The doing of anything prohibited by this act shall be evidence of the violation of the provisions of this act relating to the thing so prohibited and the omission to do anything directed to

be done shall be evidence of a violation of the provisions of this act relative to the things so directed to be done.

§ 8. The director of the New York agricultural experiment station at Geneva is charged with the enforcement of the provisions of this act, and for this purpose, may employ agents, chemists and experts, and whenever he shall know or have reason to believe that any penalty has been incurred by any person for the violation of any of the provisions of this act, or that any sum has been forfeited by reason of any such violation, he shall report the said violation with a statement of the facts to the attorney-general, who, pursuant to the provisions of chapter eight hundred and twenty-one of the laws of eighteen hundred and ninety-five may cause an action or proceeding to be brought in the name of the people for the recovery of the same.

§ 9. Chapter four hundred and thirty-seven of the laws of eighteen hundred and ninety and chapter six hundred and one of the laws of eighteen hundred and ninety-four are hereby repealed.

L. 1896, ch. 978 — An act to authorize and empower the board of trustees of incorporated villages of this state to contract with water-works companies, organized under the laws of this state, or with the owner or owners of water-works for supplying water for extinguishing fires in said villages.

Section 1. The board of trustees of any incorporated village of this state, whether incorporated under the act, entitled "An act for the incorporation of villages," passed April twentieth, eighteen hundred and seventy, and the acts amendatory thereof and supplemental thereto, or by special charter or act, shall have the power and they are hereby authorized and empowered to contract for a term of one year or more with any water-works company, organized under the laws of this state, or with any owner or owners of water-works in this state for supplying water for extinguishing fires in such village; and the amount of such contract agreed to be paid shall be annually raised as a part of the expenses of such villages, and shall be levied, assessed and collected in the manner that other expenses of said villages are raised, and when collected shall be kept separate from other funds of said village, and shall be paid over to such water-works company or owner or owners of water-works by such trus-

tees, according to the terms of any such contract; and any such contract entered into by the board of trustees of any village shall be valid and binding upon such village, providing, however, that no such contract shall be made for a longer period than five years, nor for a greater sum than one thousand dollars per annum, unless the proposition for the same be submitted to a vote of the electors of such village in the manner provided by law, and approved by the majority of the voters entitled to vote and voting on such question at an annual election or at a special election duly called.

§ 2. The provisions of this act shall not apply to villages having no regular fire department, nor to villages having less than one thousand or exceeding six thousand inhabitants by the last preceding federal census of the state enumeration, nor to villages in which the authorities have heretofore organized as a board of water commissioners or have appointed such board under chapter one hundred and eighty-one of the laws of eighteen hundred and seventy-five and the acts amendatory thereof or supplemental thereto, or in which water commissioners have been elected as specified in said act.

§ 3. All acts and parts of acts, general or special, inconsistent with this act are hereby repealed.

L. 1896, ch. 982 — An act to authorize the formation and maintenance of free public employment bureaux, and making appropriation therefor.

Section 1. It shall be the duty of the commissioner of statistics of labor, immediately upon the passage of this act, to organize and establish in all cities having a population of one million five hundred thousand inhabitants or more, a free public employment office or bureau for the purpose of receiving all applications for labor on the part of those seeking employment and all applications for help on the part of those desiring to employ labor, and to appoint a superintendent and such clerical assistants for each office so organized as in the judgment of said commissioner may appear necessary for the proper conduct of the duties of the several offices.

§ 2. It shall be the duty of the superintendent of every free public employment office so organized to receive and record, in a

book to be kept for that purpose, the names of all persons applying for labor or help, designating opposite the name of each applicant the character of employment or labor desired, and the address of such applicant. It shall also be the duty of every such superintendent to make a weekly report on Thursday of each week to said commissioner of the names and addresses of all applicants both for labor and help, and the character of the employment or labor desired, and also the names of all persons securing employment through the respective offices. Said superintendent shall also perform such other duties in the collection of labor statistics, and in the keeping of books and accounts of their respective offices as the commissioner may determine, and shall make a semi-annual report of the expense of maintaining their respective offices to the commissioner.

§ 3. It shall be the duty of the commissioner to cause to be printed weekly a list of all applicants for labor or help, and the character of the employment or labor desired, received by him from the various offices organized pursuant to the provisions of this act, and to cause two copies of such list to be mailed on Monday of each week to the superintendent of each of said offices in the state, one of which copies shall be posted by the superintendent immediately on receipt thereof in a conspicuous place in his office, subject to the inspection of all persons desiring labor or help, and the other of which copies shall be filed by the superintendent in his office for reference. Said commissioner shall also cause one copy of such list to be mailed to the supervisor of each township in this state.

§ 4. Every application for labor or help made to any office organized under this act shall be null and void after thirty days from the receipt unless renewed by the applicant.

§ 5. Every applicant for help shall notify the superintendent of the office to which the application was made, by mail, within ten days after the required help designated in his or her application has been secured, which notice shall contain the name and last preceding address of the employe secured through such office, and any refusal or failure by any applicant for help so to notify such superintendent shall bar such applicant from all future rights and privileges of such employment office, at the discretion

of the commissioner, to whom the superintendent shall report such refusal or failure.

§ 6. No compensation or fee whatsoever shall, directly or indirectly, be charged or received from any person or persons applying for labor or employment through said offices. The commissioner, any superintendent or clerk, or any person employed in any such offices charging or receiving any other compensation or fee from any applicant for labor whomsoever, as provided in this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars or imprisonment not exceeding thirty days.

§ 7. Applicants for help shall be construed to mean employers wanting employes, and applicants for labor shall be construed to mean persons wanting work to do.

§ 8. The tenure of office for all superintendents and clerks of free public employment offices, shall be two years from the date of appointment, but the commissioner shall have power of removing any such superintendents and clerks for good and sufficient cause.

§ 9. The superintendent of each of the offices organized under the provisions of this act shall receive a salary, payable monthly, which shall be fixed by the commissioner, but which shall in no case exceed the sum of one thousand two hundred dollars per annum. The clerk or clerks required in such offices shall receive a salary of not more than fifty dollars per month. Salaries, postage, stationery and other expenses necessary for the proper conduct of the business of such free public employment offices shall be paid by the state out of any funds of the state treasury not otherwise appropriated.

§ 10. The sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated from the state treasury out of any moneys not otherwise appropriated to carry into effect the provisions of this act, to be paid by the treasurer upon the warrant of the comptroller.

PART III.

AMENDMENTS TO THE CODES,

Enacted by the Legislature of 1896.

CODE OF CIVIL PROCEDURE.

CHANGES NOTED BY [ ].

§ 68. **Must be on notice.**— Before an attorney or counselor is suspended or removed as prescribed in the last section, a copy of the charges against him must be delivered to him, and he must be allowed an opportunity of being heard in his defense. [It shall be the duty of any district attorney within the department, when so designated by the appellate division of the supreme court, to prosecute all cases for the removal or suspension of attorneys and counselors as aforesaid.] The presiding justice of the appellate division making the said order of [designation aforesaid or the order of] reference in such [cases], may make an order directing the expenses of such proceedings, to be paid [by the county treasurer of the county where the attorney or counselor removed or suspended, or against whom charges were made as aforesaid, had his last known place of residence or principal place of business, which expenses shall be a charge upon such county.]

Amended by chap. 557 of 1896. In effect Sept. 1, 1896.

§ 90. **Certain assistants not to be appointed referees, receivers or commissioners.**— No person holding the office of clerk, deputy clerk, special deputy clerk or assistant in the clerk's office, of a court of record or a surrogate's court, [nor any person holding a salaried office under the city or county government, or who receives money by virtue of an office which is a county charge], within either the counties of New York or Kings shall hereafter be appointed by any court or judge a referee, receiver, or commissioner, except by the written consent of all the parties to the action or special proceeding, other than parties in default for failure to appear or to plead.

Amended by chap. 558 of 1896. In effect Sept. 1, 1896.

§ 93. **Seals and records of former superior city courts.**— The seals, books, files, records, papers and documents of the superior court of the city of New York, the court of common pleas for the city and county of New York, the superior court of Buffalo, and the city court of Brooklyn, shall be deposited in the offices of the clerks of the several counties in which said courts have heretofore existed, and shall be kept and preserved by said clerks, separate and apart from the other books, records, papers and documents in their respective offices, and shall be kept in charge of special deputy clerks, to be designated by said county clerks, so as to be readily accessible for inspection; [and the justices of the supreme court, and the said clerks of the said several counties, respectively, shall have the same powers with respect to the said books, files, records, papers and documents as the judges and clerks of said superior court of the city of New York, and the court of common pleas for the city and county of New York, the superior court of Buffalo and the city court of Brooklyn, respectively, had and possessed in reference thereto.]

Amended by chap. 74 of 1896. In effect March 5, 1896.

§ 97. **Sheriff; when directed to notify constables, etc., to attend courts.**— The sheriff of each county, except New York and Kings, must, within a reasonable time before the sitting, in his county, of any term of court, notify, in writing and personally, as many constables or deputy sheriffs of his county as he has been directed to notify by the court or judge who is to hold or preside at the term, to appear and attend upon the term during its sitting. In addition to such constables, or deputy sheriffs, the justices of the supreme court of the eighth judicial district residing in the county of Erie, or a majority of them, shall, in their discretion, appoint, and at their pleasure may remove, one or more court officers, whose duty it shall be to attend at the justices' chambers and at special terms of the supreme court held in said county of Erie. Such officers shall possess all the powers of officers designated by sheriffs to attend upon courts, and shall each receive a salary of one thousand dollars a year, to be paid in equal monthly payments by the treasurer of the county of Erie. The sheriff of said county of Erie shall not be required to attend or designate any officer to attend at justices' chambers or at special terms of the supreme court held in said county of Erie unless requested so to do by the justice presiding. [Each of the justices of the supreme court residing in Kings county may appoint, and at pleasure remove, a clerk to such justice at a salary not exceeding two thousand dollars a year, to be raised and paid in the same manner as the salaries of attendants and officers.]

Amended by chap. 891 of 1896. In effect May 26 1896.

§ 191. **Limitations, exceptions and conditions.**— The jurisdiction conferred by the last section, is subject to the following limitations, exceptions and conditions:

1. No appeal shall be taken to said court, in any civil action or proceeding commenced in any court other than the supreme court, county court or a surrogate's court, unless the appellate division of the supreme court allows the appeal by an order made at the term which rendered the determination, or at the next term after judgment is entered thereupon, and shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals.

2. [No appeal shall be taken to said court from a judgment of affirmance hereafter rendered in an action to recover damages for a personal injury, or to recover damages for injuries resulting in death, or in an action to set aside a judgment, sale, transfer, conveyance, assignment or written instrument as in fraud of the rights of creditors, when the decision of the appellate division of the supreme court is unanimous, unless such appellate division shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals, or unless in case of its refusal to so certify, an appeal is allowed by a judge of the court of appeals.]

3. The jurisdiction of the court is limited to the review of questions of law.

4. No unanimous decision of the appellate division of the supreme court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the court of appeals.

Amended by chap. 559 of 1896. In effect May 12, 1896.

§ 221. **Vacancies; how filled.**— The justices of the appellate division in each [of the third and fourth] departments shall have power to appoint and remove a clerk who shall keep his office at a place to be designated by said justices. The clerks of the appellate division in said departments shall be paid an annual salary of [two thousand dollars.] A certificate of the appointment of each of said clerks signed by the presiding justice of the judicial department for which said clerk is appointed, shall be filed with the comptroller of the state, and the salary hereby established shall be paid by the comptroller of the state to such appointees quarterly. The justices of the appellate division in each [of said] departments shall have power to appoint and remove not more than three attendants, one of whom shall act as crier. Each of said attendants shall receive a compensation to be fixed by the justices, which shall not exceed [nine hundred dollars per year, payable monthly.] He shall also be entitled to receive his traveling expenses to and from his home to the place where said sessions are held, not exceeding once in each term. The compensation of the attendants shall be paid by the comptroller of the state upon the certificate of the presiding justice of the department. [Each justice of the appellate division in each of said departments] shall have power to employ the services of a stenographer. The compensation of each stenographer shall be paid

by the comptroller [of the state] upon the certificate of the justice by whom he is employed. [Such compensation shall not exceed twelve hundred dollars a year.]

Amended by chap. 647 of 1896. In effect May 13, 1896.

§ 222. **Revocation of assignment of justice of appellate division.**— Upon the written request of a justice designated for the appellate division, the governor may revoke his designation by an order to be filed in the office of the secretary of state. Where such designation is revoked, the governor may prescribe the duties to be performed by such justice in holding court in any part of the state, from the time of such revocation until the taking effect of the next appointment of terms, as prescribed in section two hundred and thirty-two of this act, for the judicial department in which such justice resides. [New.]

Added by chap. 113 of 1896. In effect March 25, 1896.

§ 229. **Special term; title to office.**—A special term or a trial term of the supreme court must be held by one judge. An appeal from a judgment or decree in any case in which the question of the title to a public office is directly or collaterally at issue or in any manner involved, may be placed on the calendar and noticed for hearing on any day in the appellate division of the supreme court, in the first department, or in the court of appeals, and shall be heard on said day. [New.]

Added by chap. 560 of 1896. In effect May 12, 1896.

§ 232. **Appointments of terms of the supreme court.**— The justices of the appellate division in each department may fix the times and places for holding special and trial terms therein, and assign the justices of the departments to hold such terms, or make rules therefor. If said justices of the [said] appellate division in any department shall not have fixed the times and places for holding said special and trial terms, or shall not have assigned the justices to hold such terms, or shall not have made rules therefor, before the first day of December, in the year eighteen hundred and ninety-five, and in every second year thereafter, the justices of the supreme court for such judicial department, or a majority of them not designated as justices of the appellate division, must, between the first and fifteenth days of December in each of said years, appoint the times and places for holding the trial and special terms of the supreme court within their department, for two years from the first day of January of the year next following; if for any reason such an appointment is not made before the expiration of the time so specified, it must be made at the earliest convenient time thereafter. At least one special term and two trial terms must be appointed to be held in each year in each county separately organized. Fulton and Hamilton counties shall be deemed one county for the purposes of this section. Two or more trial terms may be appointed to be held and may be held at the same time in

[any county.] A trial term in any county may be held in two or more parts. The rules made by the justices of an appellate division for fixing the times and places for holding special and trial terms, and for assigning the justices to hold such terms, must be signed by the justices making them, and immediately filed in the office of the secretary of state; and a duplicate thereof must also be filed in the office of the clerk of such appellate division, who must immediately transmit a copy thereof, certified by him, to each of the justices of the supreme court in such department not designated as a justice of an appellate division. The justices of the appellate division of each department are hereby authorized to adopt and to procure an official seal, with suitable devices and inscription. A description of such seal, with an impression thereof, shall be filed in the office of the secretary of state. The expense of procuring such seal shall be a charge against the state, and shall be paid by the state treasurer upon the audit and warrant of the comptroller.

Amended by chap. 140 of 1896. In effect March 27, 1896.

§ 232. **Appointments of terms of the Supreme Court.**—The justices of the appellate division in each department may fix the times and places for holding special and trial terms therein, and assign the justices of the departments to hold such terms, or make rules therefor. If said justices of the appellate division in any department shall not have fixed the times and places for holding said special and trial terms, or shall not have assigned the justices to hold such terms, or shall not have made rules therefor, before the first day of December, in the year eighteen hundred and ninety-five, and in every second year thereafter, the justices of the supreme court for such judicial department, or a majority of them not designated as justices of the appellate division, must, between the first and fifteenth days of December in each of said years, appoint the times and places for holding the trial and special terms of the supreme court within their department, for two years from the first day of January of the year next following; if for any reason such an appointment is not made before the expiration of the time so specified, it must be made at the earliest convenient time thereafter. At least one special term and two trial terms must be appointed to be held in each year in each county separately organized. Fulton and Hamilton counties shall be deemed one county for the purposes of this section. Two or more trial terms may be appointed to be held and may be held at the same time in any county. [A trial term in any county may be held in two or more parts and a jury panel may be summoned to serve in each part or jurors may be drawn from one panel.] The rules made by the justices of an appellate division for fixing the times and places for holding special and trial terms, and for assigning the justices to hold such terms, must be signed by the justices making them, and immediately filed in the office of the secretary of state, and a duplicate thereof must

also be filed in the office of the clerk of such appellate division, who must immediately transmit a copy thereof, certified by him, to each of the justices of the supreme court in such department not designated as a justice of an appellate division. The justices of the appellate division of each department are hereby authorized to adopt and procure an official seal, with suitable devices and inscription. A description of such seal, with an impression thereof, shall be filed in the office of the secretary of state. The expense of procuring such seal shall be a charge against the state, and shall be paid by the state treasurer upon the audit and warrant of the comptroller.

Amended by chap. 561 of 1896. In effect May 12, 1896.

§ 242. **Officers required to attend a term of the appellate division; sheriff's duty.**— A term of the appellate division of the supreme court must be attended by the sheriff of the county in which it is held, his under-sheriff, or one of his deputies; by not more than three attendants appointed by such court, one of whom shall act as crier; by the clerk of the appellate division, of the supreme court appointed for the department in which the term is held; all of whom must act under the direction of the court or of the presiding justice. The sheriff of the county must cause the room in which a term of the appellate division is held to be properly heated, ventilated, lighted, and kept comfortably clean and in order. The court may enforce the performance of that duty by the sheriff. The sheriff must also provide the court with all necessary stationery and minute books, upon the written requisition of the court or of the justice presiding at the term, [and shall defray the necessary expense of telegraphing the day calendar to such county clerks as the court shall direct; also the necessary expense of transmitting printed cases and papers to the reporter; to the various libraries and to the justices of the appellate division.]

Amended by chap. 407 of 1896. In effect April 27, 1896.

§ 254. **Stenographers in Kings county.**— The justices of the supreme court residing in the county of Kings, or a majority of them, may appoint, and may at pleasure remove, [eight] stenographers who shall severally attend, as directed by the respective judges appointing them, the terms of the appellate division and trial and special terms of the supreme court, in the county of Kings, and shall each receive an annual salary of [twenty-five hundred] dollars, and the expense thereof shall be raised with the annual tax levy as a county charge.

Amended by chap. 970 of 1896. In effect May 28, 1896.

§ 359. **Stenographer for county court in Kings county.**— The county judges of the county of Kings, from time to time, must appoint, and may at pleasure remove, [two] stenographers to be attached to the county court of the county of Kings, [who must attend each term of said court, and each of whom shall receive a a salary of three thousand dollars per annum, to be paid by the

treasurer of the county of Kings in equal monthly installments.] [Each of the stenographers] appointed as prescribed in this section may, with the consent of the county judges, appoint an assistant stenographer to aid him in the discharge of his duties, whose compensation shall be paid by the stenographer appointing him, and is not a county charge. [Each of said county judges shall also appoint a confidential clerk at a salary not to exceed two thousand dollars per annum, to be paid by the county treasurer of Kings county in equal monthly installments, such clerks to be exempt from competitive examination, and their fitness and qualifications for the office shall be approved by the judge making the appointment.]

Amended by chap. 6 of 1896. In effect January 30, 1896.

§ 360. **Interpreters for county court and surrogate's court in Kings county.**— The surrogate and the county judges of Kings county must [each] from time to time appoint, and may at pleasure remove, an interpreter to be attached [respectively] to the surrogate's court and the county court of said county. [Each interpreter shall receive a salary of twelve hundred dollars per annum, to be paid by the county treasurer of said county in monthly installments. Each interpreter so appointed shall], before entering upon his duties, file in the office of the clerk of the county of Kings, the constitutional oath of office, [in which there shall also be incorporated, language] to the effect that he will fully and correctly interpret and translate each question propounded [through him] to a witness, and each answer thereto [in said courts].

Amended by chap. 46 of 1896. In effect Feb. 29, 1896.

§ 384. Within two years:

1. An action to recover damages for libel, slander, assault, battery, [seduction, criminal conversation,] false imprisonment or [malicious prosecution.]

2. An action upon a statute, for a forfeiture or penalty to the people of the state.

Amended by chap. 335 of 1896. In effect April 20, 1896.

§ 401. **Exception; when defendant is without the state.**— If, when the cause of action accrues against a person he is without the state, the action may be commenced within the time limited therefor, after his return into the state. If, after a cause of action has accrued against a person, he departs from the state and remains continuously absent therefrom for the space of one year or more, or if, without the knowledge of the person entitled to maintain the action, he resides within the state under a false name, the time of his absence or of such residence within the state under such false name is not a part of the time limited for the commencement of the action. But this section does not apply while a designation made as prescribed in section four hundred and thirty or in subdivision second of section four hundred and thirty-two of this act remains in force.

[2. Nothing in this act contained shall revive any cause of action barred by the statute, as it existed prior to the passage of this act.]

Amended by chap. 665 of 1896. In effect Sept. 1, 1896.

§ 403. **Exception when a person liable, et cetera, dies within the state.**— The term of eighteen months after the death, within the state, of a person against whom a cause of action exists, or of a person who shall have died within sixty days after an attempt shall have been made to commence an action against him pursuant to the provisions of section three hundred and ninety-nine of this act, is not a part of the time limited for the commencement of an action against his executor or administrator. If letters testamentary or letters of administration upon his estate are not issued within the state, at least six months before the expiration of the time to bring the action, as extended by the foregoing provision of this section, the term of one year after such letters are issued, is not a part of the time limited for the commencement of such an action. [The time during which an action is pending in a court of record between a person or persons and an executor or administrator, wherein the person or persons claim to recover from the executor or administrator any money or other property claimed by said executor or administrator to belong to the estate of the decedent, or is embraced in the inventory of the assets of said decedent's estate, is not a part of the time limited for the commencement of an action against an executor or administrator, for a claim against the estate of the decedent until the final determination of the action brought to recover said or other property claimed by said executor or administrator to belong to said decedent's estate:

1. Where the claim against the estate of the decedent is liquidated by the recovery of a judgment thereon against an executor or administrator in an action in a court of record or under section twenty-seven hundred and eighteen of this code, after trial on the merits.

2. Where a legatee brings an action, or institutes a proceeding, against an executor or administrator with the will annexed, to enforce the payment of a legacy.]

Amended by chap. 897 of 1896. In effect May 26, 1896.

§ 436. **How service must be made.**— The order must direct, that the service of the summons be made, by leaving a copy thereof, and of the order, at the residence of the defendant, with a person of proper age, if upon reasonable application, admittance can be obtained, and such person found who will receive it; or, if admittance cannot be so obtained, nor such a person found, by affixing the same to the outer or other door of the defendant's residence, and by depositing another copy thereof, properly inclosed in a post-paid wrapper, addressed to him, at his place of residence, in the post-office at the place where he resides; [or upon proof being made by

affidavits that no such residence can be found, service of the summons may be made in such manner as the court may direct.]

Amended by chap. 562 of 1896. In effect May 12, 1896.

§ 715. **Security.**— A receiver, appointed in an action or special proceeding, must, before entering upon his duties, execute and file with the proper clerk, a bond to the people, with at least two sufficient sureties, in a penalty fixed by the court, judge, or referee, making the appointment, conditioned for the faithful discharge of his duties as receiver; [and the execution of any such bond by any fidelity or surety company authorized by the laws of this state to transact business, shall be equivalent to the execution of said bond by two sureties.] And the court, or, where the order was made out of court, the judge making the order, by or pursuant to which the receiver was appointed, or his successor in office, may, at any time remove the receiver, or direct him to give a new bond, with new sureties, with the like conditions. But [the foregoing provisions of] this section do not apply to a case where special provision is made by law, for the security to be given by a receiver, or for increasing the same, or for removing a receiver. [A receiver who, having executed and filed a bond as provided for in this section, before presenting his accounts as receiver, must give notice to the surety or sureties on his official bond, of his intention to present his accounts, not less than eight days before the day set for the hearing on said accounting. The same notice must be given to such surety or sureties where the accounting is ordered on the petition of a person or persons other than the receiver, and in no case shall the receiver's accounts be passed, settled or allowed, unless the said notice provided for in this section shall have first been given to the surety or sureties on the official bond of such receiver.]

Amended by chap. 94 of 1896. In effect March 11, 1896.

§ 744. **General rules may regulate concerning payment into court.**— The comptroller of the state of New York shall supervise the administration of all the funds paid into any court of record, and shall prescribe regulations and rules for the care and disposition thereof, which shall be observed by all parties interested therein, unless the court having jurisdiction over the same, shall make different directions, by special order duly entered in accordance with section seven hundred and forty-seven of this act; [and the comptroller may at any time require any county clerk or clerk of any court of record, to file with any county treasurer an officially certified copy of any record, document or paper, or extracts therefrom, which he may deem necessary for the use of said county treasurer in the administration of such funds; the fees of said clerk for making and certifying such copy or copies shall be a charge upon the county where such records, documents or papers are recorded or filed.]

Amended by chap. 269 of 1896. In effect Sept. 1, 1896.

§ 793. **Where an order is necessary.**— Where the right to a preference depends upon facts which do not appear in the pleadings or other papers upon which the cause is to be tried or heard, the party desiring a preference must procure an order therefor from the court, or a judge thereof, upon notice to the adverse party. A copy of the order must be served with or before the notice of trial or argument. Such an order is not appealable, but it may be vacated by the judge or judges holding the term at which the preferred cause is noticed for trial or hearing [or by such other justice, or at such other term of court, or at such other time as shall be prescribed by the general or special rules of practice.] But a preliminary order is not requisite in a case embraced within subdivision first or second of the last section but one, and the order in a case embraced within subdivision six thereof may be made ex parte, and is conclusive. Where no order is required, a claim for preference, specifying the provision of law under which the claim is made, may be inserted in the note of issue to be filed with the clerk, and it shall then be the duty of such clerk to place such cause in its proper place among the preferred causes at the head of the calendar; except that in the counties of New York, Kings [and Erie,] and the seventh judicial district, no action or special proceeding shall be placed as a preferred cause upon the calendar of any circuit court or trial term or special term of any court as herein provided, but the party desiring a preference of any cause shall serve upon the opposite party, with his notice of trial, a notice that an application will be made to the court at the opening thereof, [or to such justice or other term of court or at such other time as shall be prescribed by the general or special rules of practice,] for leave to move the same as a preferred cause, and if the right to a preference depends upon facts which do not appear in the pleadings or other papers upon which the case is to be tried, the notice must be accompanied by an affidavit showing such facts. In said counties of New York, Kings [and Erie] and in the seventh judicial district, the application for a preference shall be made at the opening of the court, [or to such justice or other term of court, or at such other time as shall be prescribed by the general or special rules of practice,] and if it shall appear that the cause is entitled to a preference and is intended to be moved for trial at [or for] the term for which the application is made, the court [or justice] may direct that it shall be so heard.

Amended by chap. 140 of 1896. In effect March 27, 1896.

§ 830. **Party or witness since deceased.**— Where a party [or witness] has died or become insane since the trial of an action, or the hearing upon the merits of a special proceeding, the testimony of the decedent, [or insane person], or of any person who is rendered incompetent by the provisions of the last section, taken or read in evidence at the former trial or hearing, may be given or read in evidence at a new trial or hearing by either party, subject to any

other legal objection to the competency of the witness, or to any legal objection to his testimony or any question put to him. [The original stenographic notes of such testimony, taken by a stenographer who has since died or become incompetent, may be so read in evidence by any person whose competency to read the same accurately is established to the satisfaction of the court.]

Amended by chap. 563 of 1896. In effect Sept. 1, 1896.

§ 835. **Attorneys and counselors not to disclose communications.**— An attorney or counselor-at-law shall not be allowed to disclose a communication made by his client to him, or his advice given thereon, in the course of his professional employment [nor shall any clerk, stenographer or other person employed by such attorney or counselor be allowed to disclose any such communication or advice given thereon.]

Amended by chap. 564 of 1896. In effect Sept. 1, 1896.

§ 977. **Notice of trial; note of issue.**— At any time after the joinder of issue, and at least fourteen days before the commencement of the term, either party may serve a notice of trial. The party serving the notice must file with the clerk a note of issue, stating the title of the action, the names of the attorneys, the time when the last pleading was served, the nature of the issue, whether of fact or of law; and if an issue of fact, whether it is triable by a jury, or by the court, without a jury. The note of issue must be filed at least twelve days before the commencement of the term. The clerk must thereupon enter the cause upon the calendar, according to the date of the issue. The clerk must prepare the calendar and have the necessary copies ready for distribution at least five days before the commencement of the term. In the city and county of New York, in the county of Kings and in the county of Albany where a party has served a notice of trial, and filed a note of issue, for a term at which the cause is not tried, it is not necessary for him to serve a new notice of trial, or file a new note of issue for a succeeding term; and the action must remain on the calendar until it is disposed of.

Amended by chap. 565 of 1896. In effect Sept. 1, 1896.

§ 1030, subd. 3. The agent or warden of the state prison, the keeper of a county jail, or a person actually employed in a state prison or county jail [and the keeper of every alms-house.]

Amended by chap. 566 of 1896, In effect Sept. 1, 1896.

§ 1043. **Notice of drawing.**— At least six days before the drawing the county clerk must publish a notice thereof in a newspaper published in the county, if there is one; or if there is none he must affix a notice thereof on the outer door of the building where the term for which the jurors are to be drawn is appointed to be held. He must also at least three days before the time appointed for the drawing cause notice thereof to be served upon the sheriff of the

county and upon the county judge, or, in case of his absence or illness, upon the special county judge, [or, in a county where there is no special county judge, upon the surrogate or upon any justice of the supreme court residing within said county.]

Amended by chap. 342 of 1896. In effect Sept. 1, 1896.

§ 1044. **Sheriff and county judge to attend drawing.**—At the time so appointed the sheriff of the county, or his under sheriff, and the county judge, or, if notice has been served upon any other officer, in the absence [or illness] of the latter, as prescribed in the last section, either the county judge or that officer or [either of the other officers mentioned in the last section] must attend at the clerk's office of the county to witness the drawing of the jurors.

Amended by chap. 342 of 1896. In effect Sept. 1, 1896.

§ 1045. **Sheriff or county judge not appearing, to be again notified, etc.**— If the sheriff or under sheriff, and either the county judge, or, in a case specified in the last [two] sections, an officer in place of the county judge, do not appear, the clerk must adjourn the drawing of the jurors to the next day. Thereupon the clerk must forthwith cause to be served upon the absent sheriff, or county judge, or two or more justices of peace of the county, notice to attend the drawing on the adjourned day.

Amended by chap. 342 of 1896. In effect Sept. 1, 1896.

§ 1084. **Jury year; length of jury service required and allowed.**—The jury year, in the city and county of New York, commences on the first day of October. A person who has actually served as a trial juror, in a court of record of the state, within that city and county, twelve days within a jury year, is entitled to be discharged by the court, except that he shall not be discharged until the close of the trial in which he is serving, when the twelve days expire. A person discharged as prescribed in this section is, thereafter, during the same jury year, exempt from jury service in any county of the state ; [but in the city and county of New York, a person so discharged may be excused for the following jury year.] Where the certificates of one or more clerks of the courts, made as prescribed in section ten hundred and eighty-nine of this act, shows that a person is entitled to a discharge, as prescribed in this section, the commissioner of jurors must, upon request, certify to the fact. A person can not serve as a trial juror in courts of record at more than two terms in a jury year.

Amended by chap. 874 of 1896. In effect May 22, 1896.

§ 1096. **Commissioner to return lists to county clerk; correction of lists.**—On or before the first day of October, in each year, the commissioner must return to the clerk of the city and county of New York, to be filed in his office, certified copies of the lists prepared by him, of the persons liable to serve as trial jurors in

the courts of record for the ensuing jury year; [but he may omit, from such certified copies of the lists, the names of those persons who have served as prescribed in section ten hundred and eighty-four.] He may, from time to time thereafter, strike from the lists kept by him the name of a person who is found by him to be exempt or disqualified. In that case he must record the reason why the name is stricken off.

Amended by chap. 874 of 1896. In effect May 22, 1896.

§ 1097. **Old ballots to be destroyed and new ballots deposited; supplemental lists; new ballots therefor.**—[The ballots for trial jurors must be returned by the county clerk to the commissioner on the last day of each month, or immediately after adjournment of the term for which they have been drawn. The commissioner must destroy those which are not required for the current jury year.] The ballots for the current jury year must be prepared by the commissioner (who may use, for that purpose, so many of the ballots prepared for the previous year as he deems expedient). The ballots so prepared must be delivered by the commissioner to the county clerk, and deposited by the county clerk, or his deputy, in a box, as prescribed in article two of title three of this chapter. The commissioner may, from time to time thereafter, return certified copies of additional lists, containing the names of persons liable to serve as trial jurors, which were omitted from the former lists; [except the names of those who have served as prescribed in section ten hundred and eighty-four;] and the names of qualified jurors that have been returned to the commissioner during the current year, as having been fined, discharged, or excused; and ballots containing those names must be prepared in like manner, and used for the residue of the jury year.

Amended by chap. 874 of 1896. In effect May 22, 1896.

§ 1105. **Commissioner may issue notice to jurors drawn.**—The commissioner may issue, to a trial juror so drawn, a printed notice, informing him that he has been drawn, and will be duly notified and containing copies of such portions of this article as the commissioner deems advisable.

Amended by chap. 725 of 1896. In effect June 9, 1896

§ 1106. **Commissioner to notify jurors and make return.**—The clerk must deliver to the [commissioner of jurors] a certified copy of the minute, or of each minute, if there are two or more. The [commissioner] must notify each juror, named therein, to attend the part or term for which he was drawn, by serving upon him at least six days before the commencement thereof, a notice, addressed to him, stating that he has been drawn as a trial juror for, and is required to attend, the term or part specified in the notice. The notice may be served personally, or by leaving it at the juror's residence, or other place of business, with a person of

proper age and discretion. Before the commencement of the term or part, the [commissioner] must file with the clerk, the certified copy of the minute, with a return under his hand, indorsed thereupon, or annexed thereto, naming each person notified, and specifying the manner in which he was notified, and the time and place of the service of such notice. Such return shall be presumptive evidence of the fact of such service. An affidavit of the person by whom each service shall have been made, stating the manner, time and place of such service shall accompany such return.

Amended by chap. 725 of 1896. In effect June 9, 1896.

§ 1108. **Court may order new panel.**— At any time during the sitting of a term of a court of record in the city, the court may direct an additional number of trial jurors to be drawn for the term, or for the part, at which the order is made. The order must specify the number to be drawn, and the time of drawing. The drawing may be made, either in open court, under the direction of the judge; or in the ordinary manner, except that notice is not required. The [commissioner] must forthwith notify the jurors drawn by such a notice as the court directs, to attend the term or part, at the time specified in the order. He must forthwith file with the clerk of said court a return, under his hand, naming each person so notified, and specifying in each case the manner, time and place of the service of such notice. Such return shall be presumptive evidence of the fact of such service. An affidavit of the person by whom each service shall have been made, stating the manner, time and place of such service shall accompany such return.

Amended by chap. 725 of 1896. In effect June 9, 1896.

§ 1434, subd. 2. A copy of the notice must be published at least once in each of the six weeks, immediately preceding the sale, in a newspaper published in the county, [or published in an incorporated village, a part of which is within the county]; if there is [a newspaper published in such county or village; or], if there is none, in the newspaper printed at Albany, in which legal notices are required to be published.

Amended by chap. 567 of 1896. In effect May 12, 1896.

§ 1538. **Who must be parties.**— Every person having an undivided share, in possession, or otherwise, in the property, as tenant in fee, for life, by the courtesy, or for years; every person entitled to the reversion, remainder, or inheritance of an undivided share, after the determination of a particular estate therein; every person who, by any contingency contained in a devise, or grant, or otherwise, is or may become entitled to a beneficial interest in an undivided share thereof; every person having an inchoate right of dower in an undivided share in the property; and every person having a right of dower in the property, or any part thereof, which has not been admeasured, must be made a party to an action for a

partition. But no person, other than a joint tenant, or a tenant in common of the property, shall be a plaintiff in the action. [Whenever an action for the partition of real property shall be brought before the expiration of three years from the time when letters of administration or letters testamentary, as the case may be, shall have been issued upon the estate of the decedent from whom the plaintiff's title is derived, the executors, or administrators, as the case may be, if any, of the estate of said decedent shall be made parties defendant. In case no executor or administrator of such decedent shall have been appointed at the time said action is begun, that fact shall be alleged in the complaint. The executors or administrators, if any, as the case may be, of a deceased person, who, if living, should be a party to such action, shall be made parties defendant therein, and, in case no executor or administrator of such deceased person shall have been appointed, that fact shall be alleged in the complaint. Where the interlocutory judgment directs a sale of the premises sought to be partitioned; or of some part thereof, the premises so sold pursuant to such interlocutory judgment, shall be free from the lien of every debt of such decedent or decedents, except debts which were a lien upon the premises before the death of such decedent or decedents. Where the action is brought before three years have elapsed from the granting of such letters of administration or letters testamentary, as the case may be, upon the estate of the decedent from whom the plaintiff derived his title, the final judgment shall direct that the proceeds of the sale remaining after the payment of the costs, referee's fees, expenses of sale, taxes, assessments, water rates, and liens established before the death of the decedent therein directed to be paid, be forthwith paid into court by the referee making such sale by depositing the same with the county treasurer of the county, in which the trial of the action is placed, to the credit of the parties entitled thereto, to await the further order in the premises. Where the action is brought before three years have elapsed from the granting of letters of administration or letters testamentary, as the case may be, upon the estate of a deceased person who, if living, should be a party to the action, the final judgment shall direct that the share of the proceeds of such sale which would have been his, if living, be paid into court by such referee, by depositing the same with such county treasurer, to await the further order in the premises. Upon the certificate of the surrogate of the county of which the decedent was, at the time of his death, a resident, showing that three years have elapsed since the issuing of letters testamentary or letters of administration, as the case may be, upon the estate of said decedent, and that no proceeding for the mortgage, lease or sale of the real property of said decedent for the payment of his debts or funeral expenses, or both, is pending, and upon the certificate of the county clerk of the county where the real property sold under the interlocutory judgment is located, showing that no notice pro-

vided for in section twenty-seven hundred and fifty-one of the code of civil procedure has been filed in his office, the court wherein the final judgment was made shall, upon the application of any party to said action, make an order directing the county treasurer to pay to said party from said deposit the amount to which he is entitled under the said final judgment with the accumulation thereon, if any, less the fees of said county treasurer. Any party to such action may, at any time after final judgment, upon notice to the executors or administrators of the decedent from whom the party applying derived his share or interest, apply to the court in which said action is pending for leave to withdraw the deposit or share of the deposit, adjudged in the final judgment to belong to him; and, upon said application, the court may, in its discretion, make an order directing the county treasurer to pay over to said party the deposit, or the share of the deposit, adjudged in the final judgment to belong to him, but said order shall not be made until said party so applying shall have furnished a bond to the people of the state of New York in the penalty of twice the amount of the deposit sought to be withdrawn, with two or more good and sufficient sureties, approved by the judge or justice of the court making such order, and filed, with such approval, in the office of the clerk of the county in which such action is pending, to the effect that the said party so withdrawing said deposit will pay any and all claims, not exceeding the amount of said deposit, when thereunto required by order of the court or by order of the surrogate or of the surrogate's court in a proceeding to mortgage, lease or sell the real property of such decedent.]

Amended by chap. 277 of 1896. In effect Sept. 1, 1896.

§ 1678. **Sale; notice of; how conducted.**—A sale made in pursuance of any provision of this title, must be at public auction to the highest bidder. Notice of such sale must be given by the officer making it, as prescribed in section fourteen hundred and thirty-four of this act for the sale by a sheriff of real property, by virtue of an execution, unless the property is situated wholly or partly in a city in which a daily newspaper is published, and, in that case, by publishing notice of the sale in such a daily paper, at least twice in each week for three successive weeks, or in a weekly paper published in a city, once in each of the six weeks, immediately preceding the sale, or in the city of New York or the city of Brooklyn, in two such daily papers. [If the officer appointed to make such sale does not appear at the time and place where such sale has been advertised to take place, then in that case the attorney for the plaintiff may postpone or adjourn such sale, not to exceed four weeks, during which time such attorney may make application to the court to have another person appointed to make such sale.] Notice of the postponement of the sale must be published in the paper or papers wherein the notice of sale was published. The terms of the

sale must be made known at the sale, and if the property, or any part thereof, is to be sold subject to the right of dower, charge or lien, that fact must be declared at the time of the sale. If the property consists of two or more distinct buildings, farms or lots they shall be sold separately, unless otherwise ordered by the court; and provided, further, that where two or more buildings are situated on the same city lot, they be sold together.

Amended by chap. 152 of 1896. In effect Sept. 1, 1896.

§ 1913. **Action upon judgment regulated.**— Except in a case where it is otherwise specially prescribed in this act, an action upon a judgment for a sum of money, rendered in a court of record of the state, can not be maintained between the original parties to the judgment, unless, either:

1. [Ten years have elapsed since the docketing of such judgment; or,]

2. It was rendered against the defendant by default, for want of an appearance or pleading, and the summons was served upon him otherwise than personally; or,

3. The court in which the action is brought has previously made an order granting leave to bring it. Notice of the application for such an order must be given to the adverse party, or the person proposed to be made the adverse party, personally, unless it satisfactorily appears to the court that personal notice can not be given with due diligence, in which case notice may be given in such a manner as the court directs.

Amended by chap. 568 of 1896. In effect Sept. 1, 1896

§ 1948, subd. 4. [Against a foreign corporation which exercises within the state any corporate rights, privileges or franchises, not granted to it by the law of this state; or which within the state, has violated any provision of law, or, contrary to law, has done or omitted any act, or has exercised a privilege or franchise, not conferred upon it by the law of this state, where, in a similar case, a domestic corporation would, in accordance with section seventeen hundred and ninety-eight of this act, be liable to an action to vacate its charter and to annul its existence; or which exercises within the state any corporate rights, privileges or franchises in a manner contrary to the public policy of the state.] [New.]

Added by chap. 962 of 1896. In effect May 28, 1896.

§ 1955. **When injunction may be granted.**— In an action brought as specified in subdivision third [or fourth] of section nineteen hundred and forty-eight of this act, the final judgment in favor of the plaintiff must perpetually restrain the defendant or defendants from the commission or continuance of the act or acts complained of. A temporary injunction to restrain the commission or continuance thereof may be granted, upon proof, by affidavit, that the defendant or defendants [have violated any of the provisions of

either of the said subdivisions third or fourth of section nineteen hundred and forty-eight of this act.] The provisions of title second of chapter seventh of this act apply to such a temporary injunction, and the proceedings thereupon, except where provision is otherwise made in this title. For that purpose, the injunction order is deemed to have been granted as prescribed in section six hundred and three of this act. [In the trial of an action brought as prescribed in subdivisions third or fourth of section nineteen hundred and forty-eight of this act, a party or a witness is not excused from answering a question on the ground that such answer will tend to incriminate him; but such answer cannot be used as evidence against the person so answering, in a criminal action or criminal proceeding.]

Amended by chap. 963 of 1896. In effect May 28, 1896.

§ 2163. **His affidavit.**— An affidavit, in the following form, subscribed and taken by the petitioner before the county judge, or, in the city of New York, before the judge holding the term of the court, at which the order specified in the next section is made, must be annexed to the schedule:

I, ..., do swear (or affirm, as the case may be) that the matters of fact, stated in the schedule hereto annexed, are, in all respects, just and true; that I have not [in contemplation of my becoming insolvent or within two years before presenting the petition herein,] disposed of or made over any part of my property, not exempt by express provision of law from levy and sale by virtue of an execution, for the future benefit of myself or my family, or disposed of or made over any part of my property, in order to defraud any of my creditors; that I have not, in any instance, created or acknowledged a debt for a greater sum than I honestly and truly owed; and that I have not paid, secured to be paid, or in any way compounded with, any of my creditors, with a view fraudulently to obtain the prayer of my petition, [that I have not done, suffered or been privy to any act, matter or thing which, if accomplished, would be ground for withholding my discharge under the provisions of this act, or invalidate such discharge if granted.]

Amended by chap. 278 of 1896. In effect May 1, 1896.

§ 2420. **Id.; when they are equally divided.** — If a corporation created under a general statute of the state for the formation of corporations [or under any special act or charter] has an even number of trustees or directors who are equally divided respecting the management of its affairs [or if the stock of such corporation is equally divided into not more than two independent ownerships or interests], or if the entire stock of the corporation is at that time owned by the trustees or directors [who are even in number or equally divided representing the management of its affairs, or if the stock] is so divided that one-half thereof is owned or controlled by persons favoring the course of [part] of the trustees or directors and one-half [thereof is owned] by persons favoring the course of

the [other trustees or directors], the trustees or directors [or the stockholders] or one or more of them may present a petition as prescribed in the last section. And it shall be the duty of a majority of the directors or trustees of every corporation created by or under the laws of this state to present a petition as prescribed in the last section whenever directed so to do by a majority in interest of its stockholders. But this section does not apply to a savings bank, a trust company, a safe deposit company, or a corporation formed to rent safes in burglar and fire-proof vaults, or for the construction or operation of a railroad, or for aiding in the construction thereof, or for carrying on the business of banking or insurance, or intended to derive a profit from the loan or use of money.

Amended by chap. 569 of 1896. In effect Sept. 1, 1896.

§ 2432. **The different remedies under this title.**— This title provides for three distinct remedies, as follows:

1. An order made or a warrant issued against a judgment debtor, after return of an execution.

2. An order made, or a warrant issued against a judgment debtor, after the issuing and before the return of an execution.

3. An order, made after the issuing, and either before or after the return, of an execution, against the person who has property of the judgment debtor, or is indebted to him.

The proceedings under subdivision third of this section, may be pursued either alone or simultaneously with the proceedings under subdivision first or subdivision second. [The party to whom costs are awarded in a special proceeding shall be entitled to the same remedies under this title, under the same circumstances, as near as may be, as a judgment creditor. And for the purposes of this title, the party to whom such costs are awarded shall be deemed a judgment creditor, and the party against whom they are awarded shall be deemed a judgment debtor.]

Amended by chap. 176 of 1896. In effect Sept. 1, 1896.

§ 2435. **Order to examine debtor after return of execution.**— At any time within ten years after the return, wholly or partly unsatisfied, of an execution against property, issued upon a judgment, as prescribed in section twenty-four hundred and fifty-eight of this act, [or, in case of an order, issued in the same manner so far as the provisions of said section can be applied in substance,] the creditor [under such judgment or order,] upon proofs of the facts, by affidavit or other competent written evidence, is entitled to an order, requiring the debtor [under the judgment or order,] to attend and be examined concerning his property, at a time and place specified in the order.

Amended by chap. 176 of 1896. In effect Sept. 1, 1896.

§ 2513. **Id.; in other counties.**— The surrogate of each county, except New York and Kings, may, in his discretion, appoint, and at

pleasure remove, a stenographer for his court, who shall be paid a reasonable compensation, certified by the surrogate, in every case in which he takes notes of testimony. Such compensation is part of the costs of the proceedings. The stenographer of the surrogate's court of the counties of Albany, [Erie and Rensselaer] shall receive a salary, to be fixed by the surrogate, not exceeding twelve hundred dollars per annum, and shall deliver to the surrogate of the county a full copy of all the minutes taken by him; and on the receipt of his fees, not exceeding three cents per folio, a like copy to the party, or each of the parties, to the proceeding in which the minutes were taken. When not actually engaged in the discharge of his duties as stenographer, he shall perform such clerical duties in connection with the surrogate's court as the surrogate directs.

Amended by chap. 248 of 1896. In effect Sept. 1, 1896.

§ 2653a. **Determining validity of a will.**— Any person interested in a will or codicil admitted to probate in this state, as provided by the code of civil procedure, may cause the validity of the probate thereof to be determined in an action in the supreme court for the county in which such probate was had. All the devisees, legatees and heirs of the testator and other interested persons, including the executor or administrator, must be parties to the action. Upon the completion of service of all parties, the plaintiff shall forthwith file the summons and complaint in the office of the clerk of the court in which said action is begun and the clerk thereof shall forthwith certify to the clerk of the surrogate's court in which the will has been admitted to probate, the fact that an action to determine the validity of the probate of such will has been commenced, and on receipt of such certificate by the surrogate's court, the surrogate shall forthwith transmit to the court in which such action has been begun a copy of the will, testimony and all papers relating thereto, and a copy of the decree of probate, attaching the same together, and certifying the same under the seal of the court. The issue of the pleadings in such action shall be confined to the question of whether the writing produced is or is not the last will and codicil of the testator, or either. It shall be tried by a jury and a verdict thereon shall be conclusive as to the real or personal property, unless a new trial be granted or the judgment thereon be reversed or vacated. On the trial of such issue the decree of the surrogate admitting the will or codicil to probate shall be prima facie evidence of the due attestation, execution and validity of such will or codicil. A certified copy of the testimony of such of the witnesses examined upon the probate, as are out of the jurisdiction of the court, dead, or have become incompetent since the probate, shall be admitted in evidence on the trial. The party sustaining the will shall be entitled to open and close the evidence and argument. He shall offer the will in probate and rest. The other party shall then offer his evidence. The party sustaining the will shall then offer his other evidence and rebutting testimony may be offered as in

other cases. [If all the defendants make default in pleading, or if the answers served in said action raise no issues, then the plaintiff may enter judgment as provided in article two of chapter eleven of the code of civil procedure in the case of similar defaults in other actions. If the judgment to be entered in an action brought under this section is that the writing produced is the last will and codicil, or either, of the testator, said judgment shall also provide that all parties to said action, and all persons claiming under them subsequently to the commencement of the said action, be enjoined from bringing or maintaining any action or proceeding, or from interposing or maintaining a defense in any action or proceeding based upon a claim that such writing is not the last will or codicil, or either, of the testator. Any judgment heretofore entered under this section determining that the writing produced is the last will and codicil, or either, of the testator, shall, upon application of any party to said action, or any person claiming through or under them, and upon notice to such persons as the court at special term shall direct, be amended by such court so as to enjoin all parties to said action, and all persons claiming under the parties to said action subsequently to the commencement thereof, from bringing or maintaining any action or proceeding impeaching the validity of the probate of the said will and codicil, or either of them, or based upon a claim that such writing is not the last will and codicil, or either, of the testator, and from setting up or maintaining such impeachment or claim by way of answer in any action or proceeding.] When final judgment shall have been entered in such action, a copy thereof shall be certified and transmitted to the clerk of the surrogate's court in which such will was admitted to probate. The action brought as herein provided shall be commenced within two years after the will or codicil has been admitted to probate, but persons within the age of minority, of unsound mind, imprisoned, or absent from the state, may bring such action two years after such disability has been removed.

Amended by chap. 943 of 1896. In effect May 26, 1896.

§ 2528. **Appearance, how made; and effect thereof.** — In a surrogate's court, a party of full age may, unless he has been judicially declared to be incompetent to manage his affairs, prosecute or defend a special proceeding, in person or by attorney regularly admitted to practice in the courts of record, at his election, except in a proceeding to punish him for contempt, or where he is required to appear in person, by special provision of law, or by a special order of the surrogate. The issue and service of a citation may be waived by a party in any proceeding by an instrument in writing acknowledged or approved as a deed entitled to be recorded, or by personal appearance or by his attorney with written authorization executed and acknowledged as a deed and filed in the office of the surrogate.

The appearance of a party against whom a citation has been issued, has the same effect as the appearance of a defendant in an action brought in the supreme court.

Amended by chap. 570 of 1896. In effect Sept. 1, 1896.

§ 2855. **Inventory and intermediate account may be required.** — Upon the petition of the ward, or of any relative or other person in his behalf, the surrogate's court having jurisdiction to require security, as prescribed in the last three sections, may, at any time, in the discretion of the surrogate, make an order requiring a guardian appointed by will or by deed, to render and file an inventory and account, in the same form, and verified in the same manner as the inventory and account required to be filed annually by a guardian appointed by a surrogate's court, as prescribed in article second of this title. The order may also require such an inventory and account to be filed, in the month of January of each year thereafter. Sections twenty-eight hundred and forty-two to twenty-eight hundred and forty-five of this act, both inclusive, apply to such an inventory and account, and to the filing thereof, as if the guardian had been appointed by the surrogate's court. [The provisions of section twenty-eight hundred and forty-six of this act shall apply to a guardian appointed by will or deed with the same effect as if such guardian had been mentioned in said section, and the proceedings therein prescribed may be had in the case of any such guardian in the same manner as if he were a general guardian.]

Amended by chap. 61 of 1896. In effect Sept. 1, 1896.

§ 2862, subd. 8. An action to recover damages for an escape from the jail liberties, as provided by chapter two, title two, articles four and five of this act, where the sum claimed does not exceed fifty dollars. [New.]

Added by chap. 303 of 1896. In effect Sept. 1, 1896.

§ 3160. **Certain sections not to apply to New York city court; who a nonresident.** — Sections four hundred and thirty-eight and six hundred and three, sections six hundred and eleven to six hundred and nineteen, both inclusive, and sections six hundred and thirty-six, eight hundred and twenty-seven, and ten hundred and fifteen of this act do not apply to an action or a special proceeding brought in the marine court of the city of New York, or before a justice thereof, or to any proceeding therein. Sections thirty-two hundred and sixty-eight and thirty-two hundred and sixty-nine of this act do not apply to an action in the court, prosecuted as prescribed in article third of this title; or where an undertaking has been given as prescribed in section thirty-one hundred and sixty-five of this act. A plaintiff, in an action brought in the court, who has an office for the regular transaction of business in person, within the city of New York, is deemed a resident of that city within the meaning of sections thirty-two hundred and sixty-eight and thirty-two hundred and sixty-nine of this act.

[§ 2. The provisions of section ten hundred and thirteen of the code of civil procedure are hereby made applicable to and binding upon the city court of the city of New York.]

Amended by chap. 954 of 1896. In effect May 28, 1896.

§ 3251, subd. 1. To the plaintiff:

For all proceedings, before notice of trial, in an action specified in section four hundred and twenty of this act, fifteen dollars; in every other action, twenty-five dollars.

For each additional defendant served with the summons, not exceeding ten, two dollars; and for each necessary defendant in excess of that number, served with the summons, one dollar.

For procuring the appointment of a guardian or guardian ad litem, for one or more infant defendants, ten dollars.

[For procuring an order directing the service of the summons by publication thereof, or personally, without the state, on one or more defendants, ten dollars.]

For procuring an injunction order or an order of arrest, ten dollars.

Amended by chap. 226 of 1896. In effect Sept. 1, 1896.

§ 3253. **Additional allowance to either party in difficult cases, et cetera.**— In an action brought to foreclose a mortgage upon real property; or for the partition of real property; or in a difficult and extraordinary case, where a defense has been interposed, in an action; [or except in the first and second judicial districts, in a special proceeding by certiorari to review an assessment, under chapter two hundred and sixty-nine of the laws of eighteen hundred and eighty, and the acts amending the same,] the court may also, in its discretion, award to any party a further sum, as follows:

1. In an action to foreclose a mortgage, a sum not exceeding two and one-half per centum upon the sum due or claimed to be due upon the mortgage, nor the aggregate sum of two hundred dollars.

2. In any other case [or special proceeding] specified in this section, a sum not exceeding five per centum upon the sum recovered or claimed, or the value of the subject-matter involved.

Amended by chap. 571 of 1896. In effect Sept. 1, 1896.

§ 3296. **Referee's fees generally.**— A referee, in an action or a special proceeding brought in a court of record, or in a special proceeding, taken as prescribed in title twelve of chapter seventeen of this act, is entitled to [ten] dollars for each day spent in the business of the reference; unless at or before the commencement of the trial or hearing, a different rate of compensation is fixed, by the consent of the parties, other than those in default for failure to appear or plead, manifested by an entry in the minutes of the referee, or otherwise in writing, or a smaller compensation is fixed by the court or judge in the order appointing him.

Amended by chap. 90 of 1896. In effect March 11, 1896.

§ 3304. **Fees of county clerks generally.**— A county clerk is entitled, for the services specified in this section, except where another fee is allowed therefor by special statutory provision, to the following fees [to be paid in advance]: For searching and certifying the title to, and incumbrances upon real property, for each year for which the search is made, for each name, and each kind of conveyance or lien, five cents. For a copy of an order, record, or other paper, entered or filed in his office, eight cents for each folio. For filing a transcript, and making an entry as prescribed in section twelve hundred and fifty-eight of this act, twelve cents. For issuing an execution upon a judgment, a transcript whereof, or of the docket of which, has been filed in his office, fifty cents, to be paid by the party at whose request the execution is issued, and to be collected by the sheriff in addition to the sum due upon the judgment. For recording and indexing a notice of the pendency of an action filed in his office, ten cents for each folio contained in the notice. For cancelling such a notice, or a notice filed in his office, as prescribed in section six hundred and forty-nine of this act, twenty-five cents. For recording any instrument, which must or may legally be recorded by him, ten cents for each folio. For filing a certificate of satisfaction, or other satisfaction-piece of a mortgage, and entering the satisfaction, twenty-five cents. For affixing and indexing a notice of foreclosure of a mortgage as prescribed in section twenty-three hundred and ninety of this act, twenty-five cents. For entering a minute that a mortgage has been foreclosed, ten cents. For filing and entering a satisfaction of an assignment of a judgment, twelve cents. For filing and entering the bond of a collector or other officer authorized to receive taxes, twelve cents. For searching for a bond, six cents. For entering satisfaction thereof, twelve cents. For sealing any paper, when required, twelve cents. For filing and docketing notice of a mechanic's lien, ten cents. For filing and entering specifications and all other papers relating to a lien against a vessel, twenty-five cents. For filing any paper required by law to be filed in his office, other than as expressly provided for in this section, six cents. For filing any paper deposited with him for safekeeping, six cents; and for searching for such a paper, when required, three cents for each paper necessarily opened and examined. For a certificate, other than that a paper, for the copying of which he is entitled to a fee, is a copy, twenty-five cents. For inquiring into, determining and certifying the sufficiency of the sureties of a sheriff, fifty cents. For attending upon the canvassing of votes, given at an election, two dollars. For drawing the necessary certificates of the result of the canvass, eighteen cents for each folio; and for the necessary copies thereof, nine cents for each folio. For notifying the governor that any person has taken an oath of office, ten cents and the necessary postage. For notifying the governor that any person has neglected to take an oath of office, or to file or renew any security, within the time prescribed by law, or

of a vacancy in an office in his county, ten cents and the necessary postage. For notifying any person of his appointment to office, twenty-five cents and the expenses actually and necessarily incurred in giving the notice, which the comptroller deems reasonable. For entering in the minutes of the county court a license to keep a ferry, and for a copy thereof, one dollar. For taking and entering a recognizance, from any person authorized to keep a ferry, twenty-five cents. But a county clerk is not entitled to any fee, under this section, for a copy of, or for filing or certifying, any paper, in a civil action or special proceeding, in a court of which he is ex-officio clerk.

Amended by chap. 572 of 1896. In effect May 12, 1896.

§ 3312. **Compensation of deputy sheriffs and constables attending courts.**— A constable or a deputy sheriff is entitled, for attending a sitting of a court of record, pursuant to a notice from the sheriff, to the following fees: For each day's actual attendance in any county in the state, two dollars, except that in the county of [Albany] the compensation shall be three dollars, and mileage as allowed by law to trial jurors in courts of record. Those fees must be paid by the county treasurer, upon the production of the certificate of the clerk, stating the number of days that the constable or deputy sheriff attended. But the provisions of this section shall not be applicable to the counties of Kings, New York [and Erie. All other acts or section of acts conflicting herewith are hereby repealed.]

Amended by chap. 420 of 1896. In effect April 28, 1896.

§ 3358. **Terms used defined.**— The term "person" when used herein includes a natural person and also a corporation, joint stock association, the state and a political division thereof, [and any commission, board, board of managers or trustees in charge or having control of any of the charitable or other institutions of the state;] the term "real property," any right, interest or easement therein or appurtenances thereto; and the term "owner" all persons having any estate, interest or easement in the property to be taken, or any lien, charge or incumbrance thereon. The person instituting the proceedings shall be termed the plaintiff; and the person against whom the proceeding is brought, the defendant.

Amended by chap. 589 of 1896. In effect May 12, 1896.

§ 3360, subd. 1. His name, place of residence, and the business in which engaged; if a corporation or joint-stock association, whether foreign or domestic, its principal place of business within the state, the names and places of residence of its principal officers, and of its directors, trustees or board of managers, as the case may be, and the object or purpose of its incorporation or association; if a political division of the state, the names and places of residence of its principal officers; and if the state [or any commission or board of managers or trustees in charge or having control of any of the charitable or other institutions of the state,] the name, place of residence of the officer acting in its or their behalf in the proceedings.

Amended by chap. 589 of 1896. In effect May 12, 1896.

PENAL CODE.

CHANGES NOTED BY [ ].

§ 41k, subd. 4. Electioneers on election day within a polling place, or in a public street or in a building or room, unless such building or room has been maintained for such purpose for at least six months previous to said election day, or in any public manner within one hundred feet of a polling place; or displays any political poster or placard, except those lawfully provided, in or upon any building used for registration or election purposes during any day for registration or election; or,

Amended by chap. 549 of 1896. In effect May 12, 1896.

§ 117b. **Neglect of duty by superintendent or overseer of the poor.**— The county superintendents of the poor, or any overseer of the poor, whose duty it shall be to provide for the support of any bastard and the sustenance of its mother, who shall neglect to perform such duty, shall be guilty of a misdemeanor, and shall, on conviction, be liable to a fine of two hundred and fifty dollars, or to imprisonment not exceeding one year, or by both such fine and imprisonment. [New.]

Added by chap. 550 of 1896. In effect Sept. 1, 1896.

§ 267. **Public traffic.**— All manner of public selling or offering for sale of any property upon Sunday is prohibited, except that articles of food may be sold and supplied at any time before ten o'clock in the morning, and except also that meals may be sold to be eaten on the premises where sold or served elsewhere by caterers; and prepared tobacco, [milk, ice and soda water] in places other than where spirituous or malt liquors or wines are kept or offered for sale, and fruit, [flowers,] confectionery, newspapers, drugs, medicines and surgical appliances may be sold in a quiet and orderly manner at any time of the day.

Amended by chap. 648 of 1896. In effect May 14, 1896.

§ 384b. **Penalty for dealing in convict-made goods without labeling.**— A person having in his possession for the purpose of sale, or offering for sale, any convict-made goods, wares or merchandise [hereafter] manufactured [and sold] or exposed for sale,

in this state] without the brand, mark or label required by law, or removes or defaces such brand, mark or label, is guilty of a misdemeanor, [punishable by a fine not exceeding ten hundred dollars nor less than one hundred dollars, or imprisonment for a term not exceeding one year nor less than ten days, or both.]

Amended by chap. 931 of 1896. In effect Nov. 1. 1896.

§ 291, subd. 7. All cases involving the commitment or trial of children for any violation of the penal code, in any police court or court of special sessions, may be heard and determined by such court, at suitable times to be designated therefor by it, separate and apart from the trial of other criminal cases, of which session a separate docket and record shall be kept. [And all such cases and cases of offenses by, or against the person of, a child under the age of sixteen years shall have preference over all other case before all magistrates and in all courts and tribunals in this state both civil and criminal; and where a child is committed or detained as a witness in any case such case shall be brought to trial or otherwise disposed of without delay, whether the defendant be in custody or enlarged on bail.]

Amended by chap. 414 of 1896. In effect April 27, 1896.

§ 384c. A person who charges for elevating, receiving or discharging grain by means of floating or stationary elevators a greater sum than is allowed by law is guilty of a misdemeanor. [New.]

Added by chap. 551 of 1896. In effect Oct. 1, 1896.

§ 384d. A person who violates any provision of section thirty-nine of the domestic commerce law is guilty of a misdemeanor. [New.]

Added by chap. 551 of 1896. In effect Oct. 1, 1896.

§ 384e. **Unlicensed peddlers.**— A person who is found trading as a peddler without a license, or contrary to the terms of his license, or who refuses to produce his license on demand of any officer or citizen is guilty of a misdemeanor. [New.]

Added by chap. 551 of 1896. In effect Oct. 1, 1896.

§ 407, subd. 5. Violate any provision of section thirty of the domestic commerce law, relating to canned and preserved food. [New.]

Added by chap. 551 of 1896. In effect Oct. 1, 1896.

§ 424. **Guard posts; automatic couplers.**— All corporations and persons other than employes, operating any steam railroad in this state,

1. Failing to cause guard posts to be placed in prolongation of the line of bridge trusses upon such railroad, so that in case of derailment, the posts and not the trusses shall receive the blow of the derailed locomotive or car; or,

2. Failing after November first, eighteen hundred and ninety-two, to equip all their own freight cars, run and used in freight or other trains on such railroad, with automatic self-couplers, or running or operating on such railroad any freight car belonging to any such person or corporation, without having the same equipped, except in case of accident or other emergency, with automatic self-couplers, and except within the extended time allowed by the board of railroad commissioners, in pursuance of law, for equipping such car with such couplers, is guilty of a misdemeanor, punishable by a fine of five hundred dollars for each offense.

Amended by chap. 664 of 1896. In effect, May 14, 1896.

§ 427a. **Unauthorized manufacture, sale or use of illuminating oils.**— A person who violates any provision of the domestic commerce law, relating to the standard, manufacture, sale, use or storage of any oil or burning fluid, wholly or partly composed of naphtha, coal oil, petroleum or products manufactured therefrom, or of other substance or materials which will flash at a temperature below one hundred degrees Fahrenheit, or relating to the burning or carriage of any such oil or fluid which will ignite at a temperature below three hundred degrees Fahrenheit, is guilty of a misdemeanor. [New.]

Added by chap. 551 of 1896. In effect Oct. 1, 1896.

§ 428. **Fire and light on vessels in certain counties.**— A person who violates any of the provisions of [section twenty-six of the domestic commerce law is guilty of a misdemeanor.]

Amended by chap. 551 of 1896. In effect Oct. 1, 1896.

§ 447b. A person who:

1. Being the owner, lessee, proprietor or manager of a hotel, fails to comply with the law relative to providing or keeping appliances to be used as fire escapes; or,

2. Being the chief engineer or officer performing the duties of such in any city or village neglects to make or cause to be made the inspection required by law to be made touching fire escapes in hotels, is guilty of a misdemeanor. [New.]

Added by chap. 551 of 1896 In effect Oct. 1, 1896

§ 458. **Prize fighting and sparring exhibitions, aiding therein, et cetera.**— A person who, within this state, engages in, instigates, aids, encourages or does any act to further a contention, or fight, without weapons, between two or more persons, or a fight commonly called a ring or prize fight, either within or without the state, or [who engages in a public or private sparring exhibition, with or without gloves, within the state, at which an admission fee is charged or received, either directly or indirectly, or] who sends or publishes a challenge, or acceptance of a challenge for such a contention, [exhibition] or fight, or carries or delivers such a challenge

or acceptance, or trains or assists any person in training or preparing for such a contention, [exhibition] or fight, is guilty of a misdemeanor; [provided, however, that sparring exhibitions with gloves of not less than five ounces each in weight may be held by a domestic incorporated athletic association in a building leased by it for athletic purposes only for at least one year, or in a building owned and occupied by such association.]

Amended by chap. 301 of 1896. In effect Sept. 1, 1896.

§ 640, subd. 14. Trespasses upon any rifle-range lawfully used by or in connection with the national guard of the state, or any organization, division or district thereof, or who injures any target or other property situate thereon, or who willfully violates thereon any regulation established to maintain order, preserve property or prevent accident upon such range, or removes, mutilates or destroys a battle flag, book, placard, relic or record deposited or kept in the state military bureau; or,

15. Cuts, spoils or destroys any cordage, cable, buoys, buoy-rope, head-fast or other fast fixed to the anchor or moorings belonging to any vessel, or who shall, with intent to injure, tamper in any way with the lines or cables by which any vessel is moored or made fast, or who shall, with intent to injure, tamper in any manner with the steering-gear, bell-gear, engines, machinery, lights or any other equipments of any vessel, shall be deemed guilty of a misdemeanor. [New.]

Subd. 15 added by chap. 552 of 1896. In effect Sept. 1, 1896.

§ 654a. **Throwing any substance on highway to injure cycle.** — Whoever, with intent to prevent the free use of a cycle thereon, shall throw, drop or place, or shall cause or procure to be thrown, dropped or placed, in or upon any cycle path, avenue, street, sidewalk, alley, road, highway or public way or place, any glass, tacks, nails, pieces of metal, brier, thorn or other substance which might injure or puncture any tire used on a cycle, or which might wound, disable or injure any person using such cycle, shall be guilty of a misdemeanor and on conviction be fined not less than five nor more than fifty dollars. [New.]

Added by chap. 304 of 1896. In effect April 17, 1896.

§ 674a. **Unauthorized wearing badge of Loyal Legion et al.**— Any person who willfuly wears the insignia or rosette of the military order of the Loyal Legion of the United States, [or of the military order of foreign wars of the United States,] or of any society, order or organization of ten years standing in the state of New York, or uses the same to obtain aid or assistance within this state, unless entitled to use or wear the same under the constitution and by-laws, rules and regulations of such order or of such society, is guilty of a misdemeanor.

Amended by chap. 366 of 1896. In effect April 22, 1896.

§ 674a. **Unauthorized wearing badges of [certain orders and societies].**—Any person who willfully wears the insignia, [badge] or rosette of the military order of the Loyal Legion of the United States [of the order of Patrons of Husbandry], or of any society, order or organization of ten years' standing in the state of New York, or uses the same to obtain aid or assistance within this state, unless entitled to use or wear the same under the constitution and by-laws, rules and regulations of such order or of such society, is guilty of a misdemeanor.

Amended by chap. 1002 of 1896. In effect Sept. 1, 1896.

§ 675a. **Unlawful removal of poor person.**— Any person who shall send, remove or entice to remove, or bring, or cause to be sent, removed or brought, any poor or indigent person, from any city, town or county, to any other city, town or county without legal authority, and there leave such person for the purpose of avoiding the charge of such poor or indigent person upon the city, town or county, from which he is so sent, removed or brought or enticed to remove, shall be guilty of a misdemeanor, and on conviction, shall be imprisoned not exceeding six months, or fined not exceeding one hundred dollars, or both. [New.]

Added by chap. 550 of 1896. In effect Sept. 1, 1896.

§ 698. **Imprisonment of female convict.**— [Any woman over the age of sixteen years, who shall be convicted of a felony in any of the courts of this state, shall, when the sentence imposed is one year or more, be sentenced to imprisonment in the state prison for women at Auburn. When the sentence imposed is less than one year, she shall be committed to the county jail of the county where convicted, or to a penitentiary, or to a house of refuge for women.]

Amended by chap. 374 of 1896. In effect April 22, 1896.

§ 699. **Persons between the ages of sixteen and twenty-one years.**— Where a [male] person between the ages of sixteen and twenty-one years is convicted of a felony, or where the term of imprisonment of a male convict for a felony is fixed by the trial court at [one] year or less, the court may direct the convict to be imprisoned in a county penitentiary, instead of a state prison, [or in the county jail located in the county where sentence is imposed.] Whenever a child under the age of fourteen years, is charged with the perpetration of a crime, other than a capital crime, which, if committed by an adult, would be a felony, the child shall, in the discretion of the court, be tried as for a misdemeanor, and the court, magistrate or tribunal before whom such trial is held, shall impose the penalty as prescribed by law in the case of misdemeanors.

Amended by chap. 553 of 1896. In effect, May 12, 1896.

§ 701. **House of refuge.**— Where a person [under the age of twelve years is convicted of a crime amounting to felony, or where a person of twelve years and] under the age of sixteen years is

convicted of crime, [or where a male person of the age of sixteen years and under the age of eighteen years is convicted of crime not amounting to a felony], the trial court may, instead of sentencing him to imprisonment in a state prison or in a penitentiary, direct him to be confined in a house of refuge under the provisions of the statute relating thereto. Where the conviction is had and the sentence is inflicted in the first, second or third judicial district, the place of confinement must be a house of refuge established by the managers of the Society for the Reformation of Juvenile Delinquents in the city of New York; where the conviction is had and the sentence inflicted in any other district, the place of confinement must be in the Western House of Refuge for Juvenile Delinquents. But nothing in this section shall affect any of the provisions contained in section seven hundred and thirteen.

Amended by chap. 554 of 1896. In effect, June 1, 1896.

CODE OF CRIMINAL PROCEDURE.

CHANGES NOTED BY [ ].

§ 939. Repealed by chap. 272 of 1896. In effect Oct. 1, 1896.
§ 940. Repealed by chap. 272 of 1896. In effect Oct. 1, 1896.

§ 55. **Accommodation for court and officers.**—The courts have the same power to direct suitable provisions to be made for their accommodations as is now possessed by the supreme court. The recorder, city judge and judges of the court of general sessions of the city and county of New York must appoint a clerk, and not more than [eight] deputy clerks, [three] interpreters, [four] stenographers, [four record clerks and four chief court attendants].

Amended by chap. 75 of 1896. In effect March 5, 1896.

§ 56, subd. 35. For all violations of the provisions of the agricultural, [poor and domestic commerce laws.]

Amended by chap. 555 of 1896. In effect Oct. 1, 1896.

§ 60. **Special sessions in Brooklyn.**—[Subject to the power of removal provided for by sections fifty-seven and fifty-eight of this code, th. courts of special sessions in the city of Brooklyn shall, in the first instance, have jurisdiction except in case of public officers and conspiracy, to try and determine all complaints made before them, or before a police magistrate, or justice of the peace for misdemeanor committed in said city, where the term of imprisonment does not exceed one year, with or without fine, and to impose the same punishment as is authorized by statute in like cases to be inflicted by the county court of the county of Kings.] Where any jury is required for the trial of any crime or misdemeanor in said courts of special sessions in the city of Brooklyn, the said courts shall have power to summons as many jurors as the court may deem necessary for the trial of such action or misdemeanor. The said court of special sessions in the city of Brooklyn shall have power to take bail in a reasonable amount for all misdemeanors, and shall have power to take undertakings in bail either with or without the defendant thereon in the discretion of the said [courts]. All fines imposed by the said courts of special sessions in the city of Brooklyn, or by police

magistrates in said city, upon defendants convicted in said [courts] or by such [magistrates] of crimes, misdemeaners or violations of any city ordinance of the city of Brooklyn, which are paid by such defendants so convicted, to the sheriff of the county of Kings or to the keeper of the penitentiary of said city, shall be paid monthly by the said sheriff or said keeper to the respective clerks of the courts in which the said fines are imposed; provided, however, that the said sheriff or keeper of the penitentiary of Kings county may, in his discretion, pay all of such fines so paid to them, or either of them, directly to the city treasurer of the city of Brooklyn. In an examination held in any criminal proceeding by a police magistrate in the city of Brooklyn, the testimony of each witness may, in the discretion of the magistrate, be taken as a deposition by the official stenographer of the court in which said magistrate holds such examination. Such minutes of the testimony when so taken and when certified by the stenographer and by the magistrate who held such examination, shall both with reference to such examination, and in all procedure in connection with such examination, provided for by any section of this code not inconsistent herewith, be regarded as actually taken down in writing by such magistrate and subscribed by the witnesses at such examination.

Amended by chap. 92 of 1896. In effect March 11, 1896.

§ 204. **Testimony, how taken and authenticated.**—The testimony given by each witness must be reduced to writing, as a deposition, by the magistrate or under his direction, and authenticated in the following manner:

1. The authentication must state the name and age of the witness, his place of residence and his business or profession;

2. It must, unless deposition by question and answer be waived by the defendant and the witness, contain the questions put to the witness, and his answers thereto; each answer being distinctly read to him as it is taken down and being corrected or added to, until it is made conformable to what he declares to be the truth;

3. If a question put be objected to on either side, and overruled, or the witness decline answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated;

4. The deposition must be signed by the witness, or if he refuse to sign it, his reason for refusing must be stated in writing as he gives it;

5. It must be signed and certified by the magistrate.

6. The foregoing provisions shall apply to preliminary examinations in the city and county of New York only when either the defendant or the district attorney, or the representative of the district attorney shall so elect.

Subd. 6 added by chap. 818 of 1896. In effect May 21, 1896.

§ 221. **Magistrate to return depositions, statement and undertaking of witnesses to the court.**— Whenever a magistrate has discharged a defendant, or held him to answer, as provided in sections two hundred and seven and two hundred and eight, he must [within five days thereafter] return to [the clerk] of the supreme court or county court or [other] court having power to inquire into the offenses by the intervention of a grand jury, the warrant, if any, the depositions, the statement of the defendant, if he have made one, and all undertakings of bail, or for the appearance of witnesses, taken by him.

Amended by chap. 280 of 1896. In effect April 17, 1896.

§ 554. **In what cases he may be admitted to trial, before conviction, etc.** Before conviction, defendant may be admitted to bail:

1. For his appearance before the magistrate on the examination of the charge, before being held to answer.

2. To appear at the court to which the magistrate is required by section two hundred and twenty-one to return the depositions and statements upon the defendant being held to answer after examination.

3. After indictment, either upon the bench warrant issued for his arrest or upon an order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail, to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial. And any captain or sergeant of police, or acting sergeant of police, in any city or village of this state, must take bail for his appearance before a competent and accessible magistrate the next morning from any person arrested for a misdemeanor between eleven o'clock in the morning and eight o'clock the next morning, just as soon as the person offers himself as bail for the person or persons arrested. When such captain or sergeant of police or acting sergeant of police takes bail, he must take it by an undertaking in the form in this section mentioned, executed in his presence by the defendant and at least one surety, who must justify under oath, [or by the personal undertaking of the defendant, secured by the deposit of money or personal property accompanied by an oath of ownership, in the cases and in such manner as hereinafter provided;] and for [these purposes] the officer may administer [all necessary oaths.] The amount of bail taken by a captain or sergeant of police or acting sergeant of police, under this section, must be as follows: If the offense be the violation of a corporation ordinance, the amount of the bail must be one hundred dollars, except that if a conviction upon the charge would render the defendant liable only for a fine, the amount of the bail must be double the largest fine that could be imposed; if the conviction would render him liable to imprisonment for thirty days or less, the amount of the bail must be

two hundred dollars. In all other cases the amount of bail must be five hundred dollars. [In lieu of a bondsman, if the offense be the violation of a corporation ordinance where conviction renders the defendant liable to a fine only, he may give his personal undertaking, secured by a deposit with such captain or sergeant of police, or acting sergeant of police, of money or of personal property equal in value to double the largest fine that can be imposed. If personal property, the person making or authorizing the deposit shall take and subscribe an oath that he is the owner thereof, and authorized to make such deposit. A false oath in this particular is declared to be perjury and punishable accordingly. Money or personal property thus deposited conveniently transportable shall be taken to the court, by the officer making the arrest, at the time defendant is required to appear and, upon the conditions of the undertaking being satisfied, it shall be restored to the defendant. If the deposit be personal property, which can not conveniently be brought to court, the defendant shall be entitled to an order from the magistrate directing the delivery thereof to the owner after the conditions of the undertaking have been satisfied.]

The form of the undertaking, [with surety,] must be as follows.

We, A B, defendant, and residing at ....., in ....., and C D [surety], residing at ....., hereby jointly and severally undertake that the above A B, defendant, shall appear and answer the complaint (describing it briefly) before the magistrate before whom he would be arraigned if not bailed on the ..... day of ....., eighteen hundred and ninety ....., and at ..... o'clock, to answer to the complaint, and there remain to answer, subject to an order of the magistrate, and render himself in execution thereof, or if he fail to perform either of these conditions, then we will pay to the people of the state of New York the sum of ..... dollars.

[The form of the personal undertaking, with deposit, shall be as follows:

I, A B, defendant, residing at number ..... street, in the ..... of ....., hereby personally undertake and agree, that I will appear and answer to the complaint of violating the ordinances of the corporation of ....., to wit: (here briefly state charge) before the magistrate before whom I would be arraigned if not bailed, on the ..... day of ....., eighteen hundred and ninety ....., at ..... o'clock in the ..... noon, to answer to the complaint, and there remain to answer, subject to any order of the magistrate, and render myself in execution thereof, or if I fail to perform either of these conditions, then I will pay to the people of the state of New York the sum of ..... dollars, to secure which payment there has been deposited herewith (if money, state amount; if personal property, briefly describe).

§ 554.

OATH AS TO OWNERSHIP.

State of .....
..... of ..... ss.:
County of .....

..... being duly sworn, says, that he is the owner of the personal property, mentioned and described in the foregoing undertaking, and is authorized to, and hereby does, pledge and deposit the same, as security for the appearance of the defendant to answer the complaint made against him.

Subscribed and sworn to before me,
the ..... day of ..... 189..]

Amended by chap. 556 of 1896. In effect June 1, 1896.

PART IV.

LAWS OF 1896

Repealing and Amending Previous General Statutes Other than the Three Codes.

ARRANGED IN THE ORDER OF THE PAGES OF R. S., 9TH. ED., ON WHICH THE REPEALED AND AMENDED STATUTES APPEAR.

R. S., 9th ed., p. 197. § 40 of the State Law is amended to read as follows:

§ 40. Description of the arms of the state and the state flag.—The device of arms of this state, as adopted March sixteenth seventeen hundred and seventy-eight, is hereby declared to be correctly described as follows:

Charge. Azure, in a landscape, the sun in fess, rising in splendor or, behind a range of three mountains, the middle one the highest; in base a ship and sloop under sail, passing and about to meet on a river, bordered below by a grassy shore fringed with shrubs, all proper.

Crest. On a wreath azure and or, an American eagle proper, rising to the dexter from a two-thirds of a globe terrestrial, showing the north Atlantic ocean with outlines of its shores.

Supporters. On a quasi compartment formed by the extension of the scroll.

Dexter. The figure of Liberty proper, her hair disheveled and decorated with pearls, vested azure, sandaled gules, about the waist a cincture or, fringed gules, a mantle of the last depending from the shoulders behind to the feet, in the dexter hand a staff ensigned with a Phrygian cap or, the sinister arm embowed, the hand supporting the shield at the dexter chief point, a royal crown by her sinister foot dejected.

Sinister. The figure of Justice proper, her hair disheveled and decorated with pearls, vested or, about the waist a cincture azure, fringed gules, sandaled and mantled as Liberty, bound about the eyes with a fillet proper, in the dexter hand a straight sword hilted or, erect, resting on the sinister chief point of the shield, the sinister arm embowed, holding before her her scales proper.

R. S., 9th ed., pp. 235–353.

Motto. On a scroll below the shield argent, in sable, excelsior.

State flag. The state flag is hereby declared to be buff, charged with the arms of the state in the colors as described in the blason of this section. [*Thus am. by L.* 1896, *ch.* 229, *taking effect April* 8, 1896.]

R. S., 9th ed., p. 235. § 110 of the Indian Law is amended to read as follows:

§ 110. **Election of trustees.**— The adult male members belonging to the Shinnecock tribe of Indians in Suffolk county, who for the preceding six months shall have resided on the reservation of said tribe, may meet on the first Tuesday in April in each year, at the place of holding town meetings in the town of Southampton, and by plurality of votes elect three persons, belonging to such tribe as trustees. The town clerk of said town shall attend and preside at such meetings and shall enter in a book kept by him for that purpose the names of the trustees chosen. He shall also enter in such book the proceedings of such trustees and of the justices of such town in reference to the allotment or leasing of Indian lands. [*Thus am. by L.* 1896, *ch.* 168, *taking effect March* 31, 1896.]

R. S., 9th ed., pp. 238-324. The Election Law (L. 1892, ch. 680) is repealed by L. 1896, ch. 909, ante, pp. 3125-3213.

R. S., 9th ed., p. 337. The Public Officers Law is amended by inserting the following:

§ 25a. Any town or village officer, except a justice of the peace, may be removed from office by the supreme court for any misconduct, maladministration, malfeasance or malversation in office. An application for such removal may be made by any citizen resident of such town or village and shall be made to the appellate division of the supreme court held within the judicial department embracing such town or village. Such application shall be made upon notice to such town officer of not less than eight days, and a copy of the charges upon which the application will be made must be served with such notice. [*Added by L.* 1896, *ch.* 573, *taking effect May* 12, 1896.]

R. S., 9th ed., p. 353. § 49 of the Legislative Law is amended to read as follows:

§ 49. **Slips of session laws to be forwarded to clerks.**— The county clerk of each county shall, on or before the first day of January of each year, notify the secretary of state of the total

R. S., 9th ed., pp. 392, 428.

number of towns, villages and cities within such county. The secretary of state, as soon as practicable after the receipt of the slips of the session laws from the printer shall send to the county clerk of each county a sufficient number of each printed slip of each law and concurrent resolution of the legislature affecting such county or any municipality therein, to supply such county and each such municipality affected by any such law or concurrent resolution, with one copy thereof. The county clerk of each county, as soon as practicable after the receipt thereof, shall send one of each such slips affecting any town, village or city therein to the clerk thereof, and shall retain one of each such slips on file in his office. Such distribution by the county clerk shall be by mail and shall be a county charge. Such slips shall be kept on file in the office of such clerks, arranged in the order in which they were passed. Such clerks shall not be entitled to any fee or compensation for filing such slips or keeping the same on file in their respective offices. [*Thus am. by L.* 1893, *ch.* 132; *L.* 1894, *ch.* 138; *L.* 1896, *ch.* 259, *taking effect April* 15, 1896.]

R. S., 9th ed., p. 392. § 4 of the Public Lands Law is amended to read as follows:

§ 4. **Letters patent, form and contents; to be recorded in the office of the secretary of state.**—All letters patent shall be in such form as the commissioners direct, and contain an exception and reservation of all gold and silver mines. All letters patent shall be recorded in a book or books to be kept for that purpose in the office of the secretary of state, and the record thereof in any such book or a copy of any letters patent duly certified by the secretary of state to be a copy of such record thereof, whether heretofore or hereafter recorded, shall be received in evidence in any court in this state with the same force and effect as the original of such letters patent. [*Thus am. by L.* 1896, *ch.* 517, *taking effect May* 31, 1896.]

R. S., 9th ed., pp. 423, 439, 451. §§ 22, 75, 131 of the Canal Law are amended to read as follows:

§ 22. **Deputy superintendent.**—The superintendent of public works may appoint a deputy to hold office during his pleasure, and may fix his compensation not to exceed four thousand dollars per year and who may perform any or all of the duties of the superintendent except those imposed upon him as a member of the canal board or of the capitol commission. Before entering

R. S., 9th ed., pp. 439, 451, 506.

on the duties of his office he shall execute an undertaking in the sum of twenty-five thousand dollars, to be approved by and filed with the comptroller and renewed as often as the governor may require. [*Thus am. by L.* 1896, *ch.* 188, *taking effect April* 1, 1896.]

§ 75. **Removal of encroachments.**— The superintendent of public works is authorized, in his discretion to cause to be removed from the lands taken by the state for canal purposes all encroachments thereon whether buildings, fences, structures or other obstructions; that such lands may be kept in the possession of the state for the purposes of canal navigation. [*Thus am. by L.* 1896, *ch.* 492, *taking effect May* 11, 1896.]

§ 131. **Contracts required to be in writing.**—Every contract for the construction of a canal and for any repairs or improvements on the canals directed by the legislature or canal board shall be in writing and executed in triplicate, one of which shall be retained by the superintendent of public works and one deposited with the comptroller, and shall not be entered into without public notice of the time and place of the receipt of sealed proposals for the work to be done thereunder, published for ten days successively in the state paper and in one or more newspapers of each county in which such work or any part thereof is to be done. Every contract entered into by the superintendent of public works or an assistant or any assistant superintendent or deputy or superintendent of canal repairs or engineer in charge of repairs for the delivery of timber or lumber or the furnishing of other materials for the repairs of the canals or to do or complete a specified job of work relating to such repairs and involving the performance of labor and the furnishing of materials when not advertised to be let to the lowest bidder shall be in writing, stating the time within which it is to be performed and executed, not exceeding one year, duly authenticated and filed in the office of the comptroller before any money is paid thereon and within fifteen days after its execution. [*Thus am. by L.* 1896, *ch.* 188, *taking effect April* 1, 1896.]

R. S., 9th ed., pp. 506-576. §§ 13, 15, 18, 19, 30, 52, 122, 125, 126, 132, 170, 173, 176-181, 280, 283, 284 of the Military Code are amended to read as follows:

§ 13. **Composition of a regiment.**—A regiment of infantry, cavalry or artillery, shall consist of not less than eight nor more than twelve companies, troops or batteries, one colonel, one lieutenant-colonel, two majors, and a regimental staff to consist of

one regimental adjutant, one regimental quartermaster, each of the grade of captain, one commissary of subsistence, two battalion adjutants and two battalion quartermasters, each of the grade of first lieutenant, one inspector of rifle practice of the grade of captain, one surgeon of the grade of major, two assistant surgeons each of the grade of captain, one chaplain of the grade of captain, who shall be a regularly ordained minister of some religious denomination, one regimental and two battalion sergeant-majors, one regimental and two battalion quartermaster-sergeants, one commissary sergeant, one ordnance sergeant, one hospital steward and one assistant hospital steward for each battalion, one band leader or trumpeter and one drum-major, and two color-bearers each of the grade of sergeant. To a regiment of twelve companies, troops or batteries, there shall be additional officers and noncommissioned officers, as follows: One major, one battalion adjutant, and one battalion quartermaster each of the grade of first lieutenant, and one battalion sergeant-major and one battalion quartermaster-sergeant. But should a regiment be reduced below the number of twelve companies, troops or batteries, by disbandment or otherwise, the commander-in-chief shall place on the list of supernumerary officers the major and battalion adjutant, junior in rank, and one battalion sergeant-major and one battalion quartermaster-sergeant shall be reduced to the ranks or discharged in the discretion of the commanding officer. To a regiment of more than five hundred enlisted men there may be appointed by the commander-in-chief an additional inspector of rifle practice of the grade of first lieutenant. [*Thus am. by L.* 1895, *ch.* 924; *L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 15. **Company, troop and battery organization.**— To each company, troop or battery there shall be one captain, one first lieutenant and one second lieutenant, one first sergeant, one quartermaster-sergeant, four sergeants, eight corporals, two musicians and thirty-one privates as a minimum, and eighty-four privates as a maximum. To each separate troop of cavalry and each battery of light artillery there shall be one captain, two first lieutenants, two second lieutenants, one first sergeant, one quartermaster-sergeant, one commissary sergeant, one veterinary sergeant, one guidon sergeant, four sergeants, eight corporals, four

R. S., 9th ed., pp., 508–9.

artificers, two trumpeters and forty-eight privates as a minimum and eighty-four privates as a maximum. To any battery of light artillery, or separate troop, battery or company, the commander-in-chief may appoint and commission an assistant surgeon of the grade of first lieutenant, and to each separate company one additional second lieutenant. [*Thus am. by L.* 1895, *ch.* 924; *L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 18. **Signal corps.**—The commander-in-chief may, in his discretion organize signal corps. A signal corps shall consist of one captain, one assistant surgeon of the grade of first lieutenant, and one first lieutenant, and not to exceed forty-six non-commissioned officers and privates. And the commander-in-chief may appoint a chief signal officer of the grade of major, who may be assigned to the command of all the signal corps of the state, and to each signal corps one assistant surgeon of the grade of first lieutenant. The number of non-commissioned officers of each corps shall not exceed one first sergeant, one quartermaster sergeant, four sergeants and eight corporals. [*Thus am. by L.* 1895, *ch.* 924; *L.* 1896, *ch.* 668, *taking effect June* 3, 1896.]

§ 19. **Hospital corps.**— The commander-in-chief may, in his discretion, organize hospital corps, to be composed of men especially enlisted for said corps, or enlisted men who may, with his consent, be transferred to said corps upon the request of the senior medical officer, and the approval of the commanding officer of the organization in which such men are enlisted. The hospital corps shall consist of twelve men for each regiment, eight for each squadron and each battalion not a part of a regiment, and two for each separate troop, battery, company or signal corps, and shall be, in addition to the strength provided by section fifteen of this act. The commanding officer of an organization to which a hospital corps is attached, may appoint and warrant from the members thereof, corporals at the rate of one for each litter squad of four men. [*Added by L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 30. **Staff of commander-in-chief.**—The staff of the commander-in-chief shall consist of one adjutant-general of the grade of major-general, who shall be the chief of staff; one inspector-general; one chief of ordnance; one judge-advocate general, who shall be a counsellor-at-law of the supreme court of at least five years' standing; one surgeon-general, who shall be a graduate

of some incorporated school of medicine, and of at least five years' practice; one chief of engineers, who shall have been educated as an engineer; one chief of artillery; one quartermaster-general; one paymaster-general; one commissary-general of subsistence, and one general inspector of rifle practice, each of the grade of brigadier-general; six aides-de-camp, each of the grade of colonel, one of whom may be appointed from the naval militia, to represent it, with assimilated rank and uniform; and one military secretary, of the grade of colonel. Upon the recommendation of the chiefs of the staff departments, the commander-in-chief may appoint such assistants of such grade, not above that of colonel, and such store-keepers and clerks, with such pay as in his judgment may be necessary. The officers composing the staff of the commander-in-chief, their assistants and the staff officers of divisions and brigades, shall constitute the general staff of the state. [*Thus am. by L.* 1895, *chs.* 728, 924; *L.* 1896, *ch.* 360, *taking effect April* 21, 1896.

§ 52. **Appointment of major-generals, brigadier-generals and their staffs.**—All major-generals, except the adjutant-general, shall be appointed by the governor, with the consent of the senate. Brigadier-generals shall be appointed by the governor, or may, whenever the governor shall so determine and direct, be chosen by the field officers of the brigade and the commanding officers of troops, batteries and companies, not a part of a regiment or battalion, but in such brigade. Staff and signal corps officers shall be appointed by the commander-in-chief. Major-generals, brigadier-generals and commanding officers of regiments, and battalions not a part of a regiment, may nominate candidates to fill vacancies in the staffs and signal corps of their respective divisions, brigades, regiments or battalions. No person shall shall* be eligible for appointment or election as a major-general or brigadier-general, unless he has served five years in the national guard; but service in the regular or volunteer forces of the United States shall be counted as service in the national guard. No person shall be eligible for appointment as a staff officer of any division, brigade, regiment or battalion, not a part of a regiment, except judge-advocates, medical officers and chaplains, unless he shall have served at least one year in the national guard or naval militia of this state, or in the regular or volunteer forces of the United States. [*Thus am. by L.* 1896, *ch.* 360, *taking effect April* 21, 1896.

§ 122. **Pay of officers serving on boards, commissions and courts; pay of marshals.**—All officers detailed to serve on any

*So in the original.

R. S., 9th ed., pp. 532, 535.

board or commission ordered by the commander-in-chief, or on any court of inquiry, court-martial or delinquency court ordered by proper authority in pursuance of any provisions of this chapter, shall be paid a sum equal to one day's duty pay for each day actually employed in such board or court or engaged in the business thereof, or in traveling to and from the same. The sum in no case shall exceed ten days' pay and actual traveling expenses and subsistence, unless upon application of the judge-advocate of a court-martial or the presiding officer of a delinquency court for the trial of commissioned officers, or the presiding officer of a board, the commander-in-chief, or in case of such delinquency court, the commander-in-chief or the officer ordering such court, has authorized such court to sit for a longer period than ten days. An officer detailed to serve on a delinquency court for the trial of enlisted men shall be paid for each day actually employed therein, engaged in the business thereof, or in traveling to and from the same, and traveling expenses and subsistence when such court shall be held at a place other than the city or town of his residence. A marshal appointed by any court established by this chapter shall be paid two dollars for each day actually employed in the execution of the duties required of him. In addition a marshal shall be paid twenty-five per centum upon all fines, penalties and dues collected by him, which percentage shall be taxed by the officer issuing the warrant for the collection of such fines, penalties and dues, and by him added to the amount to be collected by such warrant and indorsed thereon, and shall be collected and received to his own use by such marshal or by any sheriff or other officer to whom such warrant shall be delivered for collection, and mileage or actual necessary traveling expenses while engaged in executing any process, mandate or order of the court, to be paid in like manner with other military accounts. No marshal shall receive any fees from any person served, except such percentage and mileage where the mandate shall be a warant. [*Thus am. by L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 125. **Allowances for headquarters.**— On the certificate of the adjutant-general the comptroller shall, annually, draw his warrant upon the treasurer for the following sums, namely: Twelve hundred dollars for each division and for each brigade head-

quarters fifteen hundred dollars for each regimental headquarters, five hundred dollars for each battalion headquarters, and three hundred and fifty dollars for each signal corps and squadron not part of a battalion. For brigade headquarters in brigades covering a territory of more than ten counties, five hundred dollars additional shall be allowed. The funds thus allowed shall only be expended by the respective commanding officers on the approval of the adjutant-general. [*Thus am. by L.* 1894, *ch.* 389; *L.* 1895, *ch.* 924; *L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 126. **Allowances for military organizations; military fund.**—On the certificate of the adjutant-general, the comptroller shall likewise annually draw his warrant upon the treasurer in favor of each county treasurer specified in such certificate, for the organization of the national guard mentioned therein as follows: Fifteen hundred dollars for each battery of light artillery and each troop, one thousand dollars for each signal corps, to be expended for mounted drills and parades, including the annual inspection and muster required by this chapter; two hundred and fifty dollars for each separate company; and for each regiment, battalion not a part of a regiment, separate troop, separate battery, separate company and signal corps for the purpose of defraying other necessary military expenses, a sum equal to eight dollars for each of its enlisted men present for duty, based upon the percentage present for duty for the year at the five compulsory parades required in this chapter, and which percentage shall be certified to by the inspector-general, which sums, together with the fines and penalties collected from delinquent officers and enlisted men, shall constitute the military fund of such regiment, battalion not a part of a regiment, separate troop, separate battery, separate company or signal corps. [*Thus am. by L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 132. **Pay and care when injured or disabled in service.**—A member of the national guard who shall, when on duty or assembled therefor, in case of riot, tumult, breach of the peace, insurrection or invasion, or whenever ordered by the commander-in-chief, or called in aid of the civil authorities, receive any injury, or incur or contract any disability or disease, by reason of such duty or assembly therefor, which shall temporarily in-

R. S., 9th ed., p. 545.

capacitate him from pursuing his usual business or occupation, shall, during the period of such incapacity, receive the duty pay provided by this chapter and actual necessary expenses for care and medical attendance. The period of such incapacity, and the sum allowed for such expenses shall be determined by a board of three surgeons, to be appointed upon the application of the member claiming to be so incapacitated by the commanding officer of the brigade to which such member is attached. Such board is hereby invested with all the powers of the examiners and boards provided by section one hundred and thirty-one of this chapter. The sum certified by such board to be due such member shall be a charge upon and be paid in the manner provided by this chapter, by the county in which such duty was rendered, in every case where a county is by this chapter made liable to pay for the performance of military duty. In all other cases such sums shall be paid by this state, in like manner as other military accounts are paid. [*Added by L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 170. **Supervisors to furnish armory.**— Whenever it shall appear by the certificate of the commanding officer of the regiment, or battalion not a part of a regiment, to which any troop, battery or company, organized or existing under the provisions of this chapter belongs, or in the case of a signal corps, separate troop, battery or company, by the certificate of the commanding officer of the brigade or division to which it is attached, together with the certificate of the adjutant-general that such signal corps, troop, battery, or company, has at least the minimum number of enlisted men established by this chapter, who can legally be required to perform the duties prescribed thereby, the supervisors of the county in which such signal corps, troop, battery or company is located shall, upon the demand of the commanding officer of such signal corps, troop, battery or company, approved by the commanding officer of the battalion, regiment, brigade or division to which it belongs or is attached, as the case may be, erect or rent within the bounds of such county for the use of such signal corps, troop, battery or company, a suitable and convenient armory, drill-room, and place of deposit to be approved as to sanitability and convenience by the commanding officer of the brigade to which the organization demanding such armory is

attached, for the safe keeping of the arms, equipments, accoutrements, uniforms and other military property furnished under the provisions of this chapter. The erection, repairs and alterations of all armory buildings erected or rented at the expense of a county shall be done under the direction and supervision of the inspector-general and an architect to be designated by the board of supervisors of the county. When the boundaries of a city and county are coterminous the duties hereby prescribed for the board of supervisors shall be performed by the board exercising the legislative power of said city and county. This section shall not apply to the city and county of New York. [*Thus am. by L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 173. Special provisions as to armories in New York city.— In the city and county of New York the demands of commanding officers of regiments, battalions, batteries or troops, for suitable armories, or for alterations, repairs or enlargements and furnishing of armories as hereinbefore provided, shall be made to a board hereby created, consisting of the mayor, the two senior ranking officers in command of troops of the national guard in such city and county, the president of the department of taxes and assessment and the commissioner of public works, who shall consider such applications, and, if they approve, shall make their recommendations to the commissioners of the sinking fund, who, if they concur in such recommendations, shall specify the sums to be appropriated for such purchases, erection, rental, enlargement, alteration, repairing or furnishing of armories, including suitable accommodations for division and brigade headquarters, which sum shall be inserted by the comptroller in his departmental estimates; and the board of estimate and apportionment is hereby authorized and directed to include such sums in the final estimate for the tax levy for the next ensuing year; or the commissioners of the sinking fund may, from time to time, in their discretion, direct the comptroller of the city to issue bonds or stocks of the mayor, aldermen and commonalty of the city of New York, redeemable in not less than ten nor more than twenty years from the date of issue, in such amounts as shall be necessary to provide such sums or any part thereof, and the mayor and comptroller of the city are hereby authorized to sign such bonds, which shall bear interest at a rate not exceeding three

R. S., 9th ed., p. 547.

per centum per annum, and shall not be disposed of at less than the par value thereof, and it shall be the duty of the clerk of the common council of the city to countersign the same and to affix the seal of the city thereto, and the proper authorities of the city and county of New York are hereby authorized and directed to cause to be raised upon the property, subject to taxation in the city and county of New York, such sums of money as may be required to pay the interest on such bonds and redeem them at maturity. The title to any property, acquired under this section through the approval of the commissioners of the sinking fund, shall be vested in the mayor, aldermen and commonalty of the city of New York. All armory buildings in such city shall be erected and all alterations, repairing, enlargements and furnishing thereof shall be made and done under the direction and supervision of the board created by this section, but all work which it is necessary to do, and all materials which it is necessary to purchase in and for such erection, alterations, repairs, enlargements and furnishings, shall be done and procured under contract made at public letting, pursuant to the general provisions of law as to public contracts in the city of New York. The comptroller is authorized and required to pay, on the requisition of such board, the amount certified, from time to time, to be due, in such manner as he shall direct, and the amount appropriated shall not be exceeded in incurring expenditures under this provision; such commissioners of the sinking fund may also, in their discretion, appropriate any plot or plots of land belonging to the city and not already appropriated to some other public use, as locations on which armory buildings may be erected. All repairs to armories in the city of New York shall be made by said city and all the utensils, materials and supplies certified by the auditing board of an organization quartered therein to be necessary for the cleaning, care and preservation of the portion of the armory used or occupied by said organization or of the arms, uniforms, equipments and furniture used or kept by said organization in such armory shall be supplied by said city and the board of estimate and apportionment of said city shall annually include in the final estimate for the tax levy for the next ensuing year such an

amount of money as may be required to make such repairs and furnish such supplies. [*Thus am. by L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 176. **Control of armories.**— Every armory shall be under the control and charge of the ranking line officer commanding an organization therein quartered. Commanding officers shall deposit in the armories provided for their organizations all military property received by them from time to time for the use of their respective commands. The chiefs of the general staff departments of the state, and division and brigade commanders and their respective staff officers shall at all times have access to such armory whenever, in their judgment, the exigency of the service may require it. On the application of one or more posts of the Grand Army of the Republic, or other veteran organizations of honorably discharged union soldiers, sailors or marines of the late war, approved by the commanding officer of the brigade of the national guard in whose jurisdiction armories, the property of the state, are located, and the officer in charge of such armory, subject also to the approval of the adjutant-general and under such restrictions as he may prescribe, the officer in charge of any state armory designated by the adjutant-general shall provide a proper and convenient meeting room or rooms in such armory where such posts or other veteran organizations may hold regular and special meetings, without the payment of any expense therefor. [*Thus am. by L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 177. **Armorers, janitors and engineers.**— There shall be allowed for each armory and for the headquarters of each brigade one armorer, and if the armory be heated by steam one engineer, and an assistant engineer, if the commanding officer of the brigade within whose district such armory is located and the officer in charge of such armory shall certify to the disbursing officer of the county in which such armory is located that the services of an assistant engineer are necessary; there shall also be allowed for an armory occupied by a regiment, by a battalion not part of a regiment, by a battery of light artillery, by a troop, by a signal corps, or by two or more separate batteries or companies, one janitor; and the armorer, the engineer and the janitor thus authorized shall be appointed

R. S., 9th ed., p. 553.

by the ranking officer of the organization or organizations quartered in the armory. Where a signal corps, troop, battery of light artillery, or the headquarters of a brigade occupies a portion of an armory, such signal corps, troop or battery of light artillery shall also be entitled to an armorer and a janitor, and such signal corps or brigade headquarters shall also be entitled to an armorer, who shall be appointed by its respective commanding officer, and such headquarters and quarters shall be considered an independent armory, upon the approval and certificate of the commanding officer of the brigade within whose district such armory is located. The armorer shall, under the direction of the officer appointing him, take charge of the armory, arsenal and place of deposit of the regiment, battalion, troop, battery, company signal corps and brigade headquarters, and of all uniforms, arms equipments, and other property issued under the provisions of this chapter therein deposited, and discharge all duties connected therewith as shall be from time to time prescribed by such commanding officer. The special duty of the engineer and assistant engineer shall be to take charge of the heating apparatus, and the janitor shall take charge of the armory, the cleanliness thereof and of the furniture, fixtures and property therein. [*Thus am. by L.* 1896, *chs.* 360, 853, *taking effect May* 22, 1896.]

[Former § 178, renumbered § 181, by L. 1896, ch. 853.]

§ 178. **Laborers.** — To provide for the proper care and cleanliness of armories and arsenals and of the property therein deposited, the commanding officer of a regiment, battalion not part of a regiment, troop, battery, company, signal corps, or brigade, or the ranking commanding officer, where two or more separate batteries or companies are quartered in an armory, may appoint laborers as follows: For armories or arsenals having ten thousand square feet of floor surface, one laborer; where the floor surface exceeds twenty thousand square feet, two laborers; and for each twenty thousand square feet in excess of twenty thousand, an additional laborer; such computation of square feet to include all drill rooms, administration and meeting-rooms, drill sheds, hallways, rifle range and lavatories, but excluding such cellar-rooms, boiler-rooms and store-rooms as are not included in the foregoing classification, and excluding armorers' and

janitors' quarters. Before any such appointment is made, the necessity for the employment of such laborer or laborers shall be certified by the commanding officer of the brigade, and such certificate shall be filed in the office of the disbursing officer of the county in which the armory is situated. A certificate of the number of feet of floor surface of each armory in which laborers are appointed shall be made by the engineer of the brigade and approved by the commanding officer of the brigade within whose district such armory is located, and filed in the office of the disbursing officer of the county in which the armory is located. [*Added by L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 179. **Compensation of employes in armories.**— The persons appointed under the provisions of the two preceding sections shall receive compensation for the time actually and necessarily employed in their duties, to be fixed by the commanding officer appointing such persons as follows: When employed in armories or arsenals located in cities, armorers, janitors and engineers not to exceed four dollars per day, unless the city has a population of less than two hundred thousand, in which case such compensation shall not exceed three dollars per day, and two dollars per day in armories not located in cities; laborers not to exceed two dollars per day, which compensation, as certified to by the commanding officer appointing such persons, under the provisions of the two preceding sections, shall be paid semi-monthly upon the certificate of such officer, and shall be a county charge upon the county in which such armory or arsenal is situated, and shall be levied, collected and paid in the same manner as other county charges are levied, collected and paid. A commissioned officer shall not be eligible for appointment to, and shall not hold the position of, armorer, janitor, engineer or laborer in any arsenal or armory. [*Added by L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

§ 180. **Armorers and employes for naval militia.**— On any vessel used as an armory of the naval militia, in accordance with section two hundred and ninety-four of this act, the ranking commanding officer of the organization or organizations quartered on said vessel shall have the right to appoint as many employes of the same classes described in the three preceding

R. S., 9th ed., pp. 558, 574-5.

sections as, in his judgment, the care and safety of the vessel, its equipment, armament and stores demand, and to establish their respective duties, ratings and compensation, always provided, however, that the gross compensation of such employes shall not exceed the amount per day authorized and established by section one hundred and seventy-nine of this chapter. The duties of the aforesaid employes shall include service on boats which are under the command of the ranking officer of such naval militia organization. [*Added by L.* 1896, *ch.* 853, *taking effect May* 22, 1896.]

[Former § 178 renumbered § 181 by L. 1896, ch. 853.]

§ 280. **Enrollment of reserve naval militia.**—When in conformity with article one of this chapter an enrollment of persons subject to military duty shall be made, there shall be separately enrolled and designated as naval militia in such districts as the commander-in-chief may designate, all seafaring men of whatever calling or occupation, and all men engaged in navigation of the rivers, lakes and other waters; all persons engaged in the construction and management of ships and crafts, or any part thereof, upon such waters, together with ship owners and their employes, yacht owners, members of yacht clubs and all other associations for aquatic pursuits, and all ex-officers and former enlisted men of the United States navy and of the naval militia of this state. [*Thus am. by L.* 1896, *ch.* 360, *taking effect April* 21, 1896.]

§ 283. **Staff officers.**—The captain shall have power to nominate a staff to consist of a chaplain, an ordnance officer, an engineer, a paymaster, a surgeon, a signal officer and an aide, each of the grade of lieutenant. The commanding officer of each battalion shall have power to nominate a staff to consist of a paymaster, an engineer and a surgeon, each of the grade of lieutenant, an assistant surgeon and a signal officer, each of the grade of lieutenant junior grade, and an assistant paymaster of the grade of ensign. [*Thus am. by L.* 1896, *ch.* 360, *taking effect April* 21, 1896.]

§ 284. **Election of officers and appointment of petty officers.**—The captain may be appointed by the commander-in-chief or with the approval of the commander-in-chief may be chosen by the commissioned line officers of the naval militia; commanders, lieutenant-commanders and lieutenants to act as navigators, shall be chosen by the commissioned officers of their respective battalions; lieutenants, lieutenants junior grade and ensigns

R. S., 9th ed., pp. 590, 609.

shall be chosen by the officers and enlisted men of their respective divisions. Petty officers shall be nominated, appointed and examined, and if found qualified, warranted in like manner as non-commissioned officers in the national guard. The time and place of holding elections shall be fixed by the captain, if there be one, if not, by the commander-in-chief, where the offices to be filled are captain, commander, lieutenant-commander and lieutenant to act as navigator; by the commanding officer of each battalion for the offices in the divisions of his command, and by the captain, if there be one, otherwise by the commander-in-chief, for officers in divisions not a part of a battalion. The officer fixing the time of the election shall cause written or printed notices thereof to be served on those entitled to vote thereat, at least five days prior to the time fixed for holding the same. [*Thus am. by L.* 1896, *ch.* 360, *taking effect April* 21, 1896.]

R. S., 9th ed., p. 590. § 24 of the General Municipal Law is amended to read as follows:

§ 24. **Free public libraries.** – Any municipal corporation may establish and maintain a free public library or museum in accordance with the library provisions of the university law, being chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-two. [*Thus am. by L.* 1896, *ch.* 576, *taking effect May* 12, 1896.]

R. S., 9th ed., pp. 609-655. §§ 37, 68, 69, 93, 127, 141, subd. 3, 162, 163, 164, 230, subd. 4, of the County Law, are amended to read as follows:

§ 37. **Fire districts outside of incorporated villages.**— Each board of supervisors may, on the written, verified petition of the taxable inhabitants of a proposed fire district outside of an incorporated village or city, and within the county, whose names appear on the last preceding assessment-roll of the town within which such proposed fire district is located, as owning or representing more than one-half of the taxable real property of such district, or as owning or representing more than one-half of the taxable real property of such district owned by the residents thereof, establish such district as a fire district. No such district shall extend in any direction to exceed one mile from the nearest engine or hook and ladder house located within the district, nor shall any property be entitled to the protection, nor liable to be assessed or taxed for the support, of any fire department of any such district, unless the same lies wholly within the

R. S., 9th ed., p. 609.

district. When any such fire district has been established in the manner above provided, the legal voters thereof may elect not less than three nor more than five residents thereof to be fire commissioners, for a term of five years, or such less term as a majority of such voters at the time of any such election may express on their ballots; and may also elect a treasurer in such fire district for a term of three years, who shall be entitled to receive and have the custody of the funds of the district and pay out the same for the purposes herein provided for, on the order of the fire commissioners, which treasurer before entering on the duties of his office, shall give such security as the board of supervisors may require. The first election for such fire commissioners and treasurer, shall be called by the clerk of the town within which any such district shall be established, within thirty days from the establishment of such district, and upon such notice, and in the same manner as required for by special town meetings. All subsequent elections shall be called in the same manner by the clerk of the town, not less than thirty days prior to the expiration of the term of office of any such commissioners or of the treasurer; special elections to fill any vacancies shall be called in the same manner, within thirty days after any such vacancy shall occur. Any such district, when established, shall be known by such name as the fire commissioners thereof may adopt at their first meeting for organization, and thereafter such fire commissioners shall be authorized and empowered to purchase apparatus for the extinguishment of fires therein; rent or purchase suitable real estate and buildings for the keeping and storing of the same; and to procure supplies of water, and have control and provide for the maintenance and support of a fire department in such district; and shall have the power to organize fire, hook, hose, ladder, axe and bucket fire patrol companies, and to appoint a suitable number of able and respectable inhabitants of said district as firemen, and to prescribe the duties of the firemen and the rules and regulations for the government of such companies and of the fire department; and who shall have power to make any and all contracts within the appropriations voted by the resident taxpayers of the district for the purpose of carrying out the authorization and powers herein granted. Whenever the fire commissioners in any such fire district shall submit a request

in writing for an appropriation of any sum of money for the purposes herein authorized, the clerk of the town in which such fire district shall be located, shall call a meeting of the resident taxpayers of the district for the purpose of voting upon the question of appropriating such money; such meeting to be called by a notice posted conspicuously in at least two of the most public places in such fire district, at least ten days before the holding of any such meeting, which notices shall state the time, place and purposes of the meeting. At any such meeting such resident taxpayers may appropriate the amount requested by the fire commissioners, or any less amount, and when any such appropriation is made, the amount appropriated shall be assessed, levied and collected on such district, in the same manner, at the same time and by the same officers as the taxes of the town in which the district is located are assessed, levied and collected, and when collected, shall be paid over immediately by the supervisor of the town to the treasurer of the fire district; and the town shall be responsible for any and all sums so collected until the same shall be paid over to such treasurer. All meetings of any such district called for the election of officers, or for the appropriation of money, shall be presided over by a resident taxpayer to be designated by the fire commissioners, except that the first meeting after any such fire district shall have been established shall be presided over by a resident taxpayer selected by the legal voters at the meeting; and all elections for fire commissioners and for treasurer shall be by ballot, in the same manner as is provided for the election of other town officers. The board of supervisors in any county in which any such fire district shall have been heretofore or shall be hereafter established, may at any time, upon the written verified petition of the taxable inhabitants of any such district, whose names appear upon the last preceding assessment-roll of the town within which such district is located as owning or representing more than one-half of the taxable real property of such district, or as owning or representing more than one-half of the taxable real property in such district owned by the residents thereof, discontinue such district as a fire district, and upon such action being taken by the supervisors, the fire commissioners of such district, where it is wholly within a village incorporated since said district was formed shall turn

R. S., 9th ed., p. 617.

over to any fire corporation organized by the trustees of said village all the property thereof, such village to pay all the debts thereof, and in other than such last named districts the fire commissioners shall proceed to sell the property belonging to such district at public sale; three notices of such sale shall be posted conspicuously in three of the most public places in the district, for a period of thirty days prior to the sale, and the proceeds of such sale shall be paid over by the treasurer of the district to the supervisor of the town, and the sum so paid over shall be credited to the taxable real property located in such district, in the next succeeding assessment of town taxes. Whenever any portion of any such fire district heretofore or hereafter established shall be incorporated into the corporate limits of any incorporated village or city, the board of supervisors of the county in which such district is located, upon the written verified petition of more than one-half in assessed valuation of the taxable inhabitants of such incorporated portion of the fire district, *change the boundaries of such district in such manner as shall exclude such incorporated portion of the district, and thereafter such incorporated portion of the district shall not be entitled to the protection, nor liable to be assessed or taxed for the support of the fire department of such district. [*Thus am. by L.* 1895, *ch.* 937; *L.* 1896, *ch.* 902, *taking effect May* 26, 1896.]

§ 68. **Bridges over county lines.**— The board shall provide for the care, maintenance, preservation and repair of any draw or other bridge intersecting the boundary line of counties or towns, and which bridge is by law a joint charge on such counties or towns, or on the towns in which it is situated; and to severally apportion, as it may deem equitable, the expenses thereof on the towns respectively liable therefor, or on the respective counties when liable; but when such bridge shall span any portion of the navigable tide-waters of this state, forming, at the point of crossing, the boundary line between two counties, such expense shall be a joint and equal charge upon the two counties in which the bridge is situated, and the board of supervisors in each of such counties shall apportion such expense among the several towns and cities in their respective counties, or upon any or either of such towns and cities, as in their judgment may seem proper; and if there be in either of said counties, a city, the

* So in the original.

boundaries of which are the same as the boundaries of the county, then it shall be the duty of the common council of such city, to perform the duty hereby imposed upon the boards of supervisors; but no town or city not immediately adjacent to such waters, at the points spanned by said bridge shall be liable for a larger proportion of such expense than the taxable property of such town or city bears to the whole amount of taxable property of such county. The board of supervisors of such counties or in any city embracing the entire county, and having no board of supervisors, the common council shall have full control of such bridges. No such bridge shall be constructed unless the board of supervisors in each of such counties, and the common council of the city whose boundaries are the same as the boundary of the other county adjacent to such waters, shall first by resolution determine that such bridge is necessary for public convenience, in which case such common council, with the consent of the mayor, may authorize the issue of bonds for the purpose of constructing such bridge, to be issued as other bonds are issued in said city. Whenever any bridge now spanning any such navigable tide-waters or hereafter erected across any such navigable tide-waters, shall be condemned by the United States authorities as an obstruction to navigation, and shall be ordered removed, the county and city authorities having charge of such bridge, if they shall determine that such bridge shall be rebuilt, shall, as soon as practicable after such determination, cause plans to be prepared for the erection of the new bridge and the removal of any bridge so condemned as aforesaid, and within a reasonable time after the approval of any such plans by the United States authorities, the proper officers shall proceed with the construction of said new bridge. In case of any unreasonable delay on the part of the officer or officers charged with the duty of construction of such new bridge, such duty may be enforced by mandamus upon the application of any citizen interested in its performance. [*Thus am. by L.* 1896, *ch.* 995, *taking effect May* 29, 1896.]

§ 69. **Authorize towns to borrow money.**— The board may, upon the application of any town liable or to be made liable to taxation in whole or in part for constructing, building, repairing or discontinuing any highway or bridge therein or upon its borders, pursuant to a vote of a majority of the electors of any such town at an annual town meeting, or special town meeting,

R. S., 9th ed., p. 634.

called for that purpose, or upon the written request of the commissioners of highways and town board of such town or towns, authorize such town or towns to construct, build, repair or discontinue such highway or bridge, and to borrow such sums of money for and on the credit of such town or towns, as may be necessary for that purpose, and to lay out, widen, grade, discontinue or macadamize such highway, or to purchase for public use any plankroad, turnpike, tollroad or tollbridge in such town or towns, and may authorize the company owning the same to sell the same, or any part thereof or the franchises thereof, or to pay any debt incurred in good faith by or in behalf of such town or towns for such purposes. If such highway or bridge shall be situated in two or more towns in the same county, the board shall apportion the expenses among such towns in such proportion as shall be just. But in the county of Queens a vote of a majority of the electors of any such town or towns, voting at an annual town meeting, or special town meeting called for that purpose, must first be obtained before the board can authorize such town or towns to borrow any money for, or on the faith and credit of such town or towns for the purposes above mentioned. [*Thus am. by L.* 1894, *chs.* 79, 163; *L.* 1895, *ch.* 742; *L.* 1896, *ch.* 178, *taking effect April* 1, 1896.]

§ 93. **Food and labor.**— Prisoners detained for trial, and those under sentence, shall be provided with a sufficient quantity of plain but wholesome food, at the expense of the county; but prisoners detained for trial may, at their own expense, and under the direction of the keeper, be supplied with any other proper articles of food. Such keeper shall cause each prisoner committed to his jail for imprisonment under sentence, to be constantly employed at hard labor when practicable, during every day, except Sunday, and the board of supervisors of the county, or judge of the county, may prescribe the kind of labor at which such prisoner shall be employed; and the keeper shall account, at least annually, with the board of supervisors of the county, for the proceeds of such labor. Such keeper may, with the consent of the board of supervisors of the county, or the county judge, from time to time, cause such of the convicts under his charge as are capable of hard labor, to be employed outside of the jail in the same, or in an adjoining county, upon such terms as may be agreed upon between the keepers and the officers, or persons, under whose direction such convicts shall be placed,

subject to such regulations as the board or judge may prescribe; and the board of supervisors of the several counties are authorized to employ convicts under sentence to confinement in the county jails, in building and repairing penal institutions of the county and in building and repairing the highways in their respective counties or in preparing the materials for such highways for sale to and for the use of such counties or towns, villages and cities therein; and to make rules and regulations for their employment; and the said board of supervisors are hereby authorized to cause money to be raised by taxation for the purpose of furnishing materials and carrying this provision into effect; and the courts of this state are hereby authorized to sentence convicts committed to detention in the county jails to such hard labor as may be provided for them by the boards of supervisors. [*Thus am. by L.* 1896, *ch.* 826, *taking effect May* 21, 1896.]

§ 127. **Penalties, collection and application of.**— The penalties imposed by this article for failure to kill dogs as prescribed therein shall be collected by the supervisor of the town where they are incurred, upon complaint being made to him of such failure, in the manner provided by the town law for the recovery of penalties given by law to a town for its use. Such penalties when so collected shall be paid into the town fund provided by this article for the payment of damages incurred by dogs killing sheep in such town. [*Added by L.* 1896, *ch.* 680, *taking effect May* 15, 1896.]

§ 141, subd. 3. Yearly, and at such other times as the board of supervisors shall by resolution require, make a true, written statement of his accounts generally, verified by his oath to be in all respects true, and file the same with the clerk of the county, and transmit a copy thereof by mail to the comptroller and state treasurer. [*Thus am. by L.* 1896, *ch.* 281, *taking effect April* 17, 1896.]

§ 162. **Deputy clerk.**—Every county clerk shall, within ten days after entering upon the duties of his office, make, under his hand and seal, and record in his office, a written appointment of some suitable person to be deputy clerk of his county. In counties containing a population of more than one hundred thousand by the last preceding federal census or state enumeration, the county clerk may, in like manner, appoint not to exceed two additional deputies. Every such deputy shall hold office

R. S., 9th ed., pp. 640–1.

during the pleasure of the clerk. When any such deputy is temporarily absent, disqualified or disabled, the clerk shall appoint some one of his assistants to act as a deputy in his place for a period not exceeding thirty days and without any additional compensation. Before any such deputy enters on his duties as such, he shall take the constitutional oath of office. If there shall be no county clerk, or deputy county clerk, or assistant authorized to act as deputy, the county judge may designate in writing, to be recorded in the county clerk's office, a suitable person to act as county clerk with all the powers, duties and privileges of the office, and subject to the liabilities thereof, until a county clerk shall have been elected, or appointed, and qualified. [*Thus am. by L.* 1896, *ch.* 48, *taking effect February* 29, 1896.]

§ 163. **Duties of deputy.**—Any such deputy may perform such duties of the clerk as may be assigned to him by an order of the clerk to be entered in his office and shall also perform all the duties of the clerk when the clerk shall be absent from his office, or shall be incapable of performing the duties thereof, or when the office shall become vacant, until it shall be filled, except that of deciding upon the sufficiency of sureties, which duty shall devolve upon the county judge. [*Thus am. by L.* 1896, *ch.* 48, *taking effect February* 29, 1896.]

§ 164. **Statement to board of supervisors.**—Every county clerk shall present to the board of supervisors of his county, upon the first day of their annual meeting, a statement, verified by his oath to be true, showing for the year preceding the first day of January:

1. The amount of all fees charged or received for searches, and for certificates thereof.

2. The amount of all fees charged or received for recording any documents in his office, and for certificates thereof.

3. The amount of all sums charged or received for services rendered the county.

4. The amount of all sums charged or received for official services.

5. The sums paid by him for assistance, fuel, lights, stationery and other incidental expenses, the names of the persons paid and the items thereof; but he shall not make any charge against the county for stationery, except record books and stationery furnished by him for courts held in his county, but the board of supervisors may allow the county clerk the necessary expenses

incurred by him for lighting and heating his office. [*Thus am. by L.* 1896, *ch.* 593, *taking effect May* 12, 1896.]

§ 230, subd. 4.—The compensation of the criers of the courts of record within the county for attendance thereat, at three dollars per day and also travelling fees, at the rate of five cents per mile, for going to and returning from the place of attendance. [*Thus am. by L.* 1896, *ch.* 439, *taking effect May* 9, 1896.]

R. S., 9th ed., p. 669. § 6 of the Highway Law is amended to read as follows:

§ 6. **Road machines and implements.**— Commissioners of highways may, upon the request of one or more overseers of the highway districts of their town, contract for and purchase for such district or districts, upon credit or otherwise, a good and sufficient scraper and plow, or either of them, and if a majority of the taxpayers of one or more highway districts in any town, representing more than one-half of the taxable property in such district or in each of such districts, to be ascertained by the last preceding assessment-roll and certified to as such by the town clerk of the town, petition the commissioner or commissioners of highways of such town therefor, such commissioners may, together with the supervisor and overseer or overseers of such district or districts, contract for and purchase upon credit or otherwise, a road machine for the use of such district or districts, which implements shall be used, cared for and owned by such district or districts jointly. Such implements shall be paid for out of the highway tax of the district or districts for which they are purchased, and may be paid for in annual installments, not exceeding five. If purchased for more than one district the amount paid by each shall be in proportion to the amount of highway tax; a copy of the note or contract issued upon the purchase of such implements, shall be filed in the office of the town clerk of the town in which such town or road district is situated, and it shall be the duty of said town clerk to present a statement of the sum due thereon to the town board at each annual meeting thereafter for the audit of town charges, and the town board shall audit such sum and certify the same to the board of supervisors of the county. Not more than one-half of the highway tax of any district shall be applied in payment therefor in any one year. The portion of such tax so applied, shall be required to

R. S., 9th ed., pp. 669, 688.

be paid in money, and be assessed and levied upon the property of such district or districts, and collected in the same manner as other town charges are assessed, levied and collected, except that the amount thereof shall be put in a separate column upon the tax roll, and the board of supervisors of the county shall cause the sum certified by the town board, to be levied upon the taxable property of such highway district. Such commissioner of highways shall with the assistance of the overseers of highways, in any road district which is to be charged with the payment for such machine after the completion of the assessment-roll, and ten days before the meeting of the board of supervisors of the county, make and deliver to the supervisor of such town a list of the persons in such district or districts who are named in the last assessment-roll of machine. The commissioner or commissioners of highways may, also, with the approval of the town board, purchase and hold for the use of the town at large, one or more road machines, and pay for the same with money appropriated and set apart for highway purposes. It shall be the duty of the commissioner or commissioners of highways of each town to provide a suitable place for housing and storage of all tools, implements and machinery that are owned by the town or by the several highway districts, and cause these tools and implements and machinery to be stored therein when not in use. [*Thus am. by L.* 1895, *ch.* 586; *L.* 1896, *ch.* 987, *taking effect May* 28, 1896.]

R. S., 9th ed., p. 688. § 62 of the Highway Law is amended to read as follows:

§ 62. Every person and corporation shall work the whole number of days for which he or it shall have been assessed, except such days as shall be commuted for, at the rate of one dollar per day, and such commutation money shall be paid to the overseers of highways of the district in which the labor shall be assessed, within at least twenty-four hours before the time when the person or corporation is required to appear and work on the highways; but any corporation may pay its commutation money to the commissioners of highways of the town, who shall pay the same to the overseers of the districts, respectively, in which the labor commuted for was assessed, except in the counties of Onondaga, Columbia, Wayne, Erie, Sullivan, Broome and

R. S., 9th ed., pp. 724-5.

Orange, where such commutation money shall be paid on or before the first day of June of each year, to the commissioner or commissioners of highways of the town in which the labor shall be assessed, and such commutation money shall be expended by the commissioner or commissioners of highways upon the roads and bridges of the town as may be directed by the town board. [*Thus am. by L.* 1895, *ch.* 579; *L.* 1896, *ch.* 973, *taking effect May* 28, 1896.]

R. S., 9th ed., pp. 724-5, 756, 772. §§ 4, 5, 109, 174 of the Town Law are amended to read as follows:

§ 4. Debts owed by a town, so divided or altered shall be apportioned in the same manner as the personal property of a town, and each town shall be charged with its share of the debts, according to the apportionment and the amount of the unpaid taxes levied and assessed upon the taxable property of the town, divided or altered, before the division or alteration thereof, shall be apportioned between the several towns interested therein, according to the amount of taxable property in each town as the same existed before such division or alteration, to be ascertained by the last assessment-roll of the town. In making such division, there shall be set off to each town interested the unpaid taxes assessed and levied upon the real property within its borders and such as were assessed and levied upon personal property against persons or corporations, as resided within its borders at the time of the assessment; and each town, to which the same are proportioned, shall have the same power, right and methods of collecting the same by warrant, action, sale or otherwise, as the town so divided or altered had, or would have had if such town had not been so divided or altered. Any such town having apportioned to it more than its proportion of unpaid taxes, according to the aforesaid taxable property, to be ascertained by the last assessment-roll of such town, shall pay to the other town or towns interested, such sum or sums as shall be necessary to make such apportionment correspond with the said taxable property, as ascertained by the said last assessment-roll of said town, before the said division or alteration. [*Thus am. by L.* 1896, *ch.* 459, *taking effect May* 9, 1896.]

§ 5. Whenever a meeting of the town boards of two or more towns shall be required, in order to carry into effect the pro-

R. S., 9th ed., pp. 756, 772.

visions of this article, such meeting may be called by either of the supervisors of such towns, by giving at least three days' written notice to all the other members of such town boards of the time and place of such meeting. Whenever said town boards shall fail to carry into effect the provisions of this article and agree upon the amount of assets to which each town is entitled, and the amount of indebtedness for which each town is liable and complete the full settlement thereof, within eighteen months after the division or alteration mentioned in section three of this article, any of such towns may begin and maintain an action against the other town or towns to make and enforce such settlement. The provisions of this article shall apply to towns heretofore and hereafter divided or altered. [*Thus am. by L.* 1896, *ch.* 459, *taking effect May* 9, 1896.]

§ 109. **Use of barbed wire in the construction of division fences.** — Barbed wire may be used in the construction of any division fence, provided, however, that the person or corporation desiring to use such material shall first obtain from the owner of the adjoining property his written consent that it may be so used. If the owner of the adjoining property refuses to consent to the building of such a fence, it may nevertheless be built in the following manner: The fence shall be of four strands of wire with a sufficient bar of wood at the top; and the size of such top bars and of the posts and supports of such fence, and their distances apart, shall be such as the fence viewers of the town may prescribe. Whenever such fence shall become so out of repair as to be unsafe, it shall be the duty of the owner or owners to immediately repair the same. But any person building such a fence without the written consent of the owner of the adjoining property, shall be liable to all damages that may be occasioned by reason of such fence. But this section shall not be so construed as to permit railroad corporations to use barbed wire in the construction of fences along their lines contrary to the provisions of section thirty-two of the railroad law. [*Added by L.* 1896, *ch.* 524, *taking effect May* 11, 1896.]

§ 174. **Powers conferred upon town auditors.**—Upon the election or appointment and qualification of any such board of town auditors in any town, the powers of the town board of that town, with respect to auditing, allowing or rejecting all accounts, charges, claims or demands against the town, and

R. S., 9th ed., pp. 835-6.

with respect to the examination, auditing and certification of accounts of town officers, shall devolve upon and thereafter be exercised by such board of town auditors, during the continuance of such board; and with respect to the powers so conferred, and the duties so imposed, they shall be the town board of the town during their continuance. No person so elected or appointed shall hold any other office in the town during the term for which he is elected or appointed; and if he shall accept an election or appointment to any other office in the town, he shall immediately cease to be a town auditor, and the vacancy in his office shall be supplied in the manner hereinafter provided. [*Thus am. by L.* 1896, *ch.* 85, *taking effect March* 11, 1896.]

R. S., 9th ed., pp. 835-868. §§ 130, 145, Art. IX Definitions, §§ 161-2, 171, 180-4 of Art. X, 184 of Art. XI, 207a, of the Public Health Law are amended to read as follows:

§ 130. **Fees and compensation of health officers.**— The health officer shall receive fees for his services at not exceeding the following rates, namely: For inspection of any vessel from a foreign port, five dollars. For inspection of every vessel from a domestic port, south of Cape Henlopen, between May first and November first in each year, steamers three dollars; other vessels, one dollar. For medical inspection of every one hundred or fraction of one hundred steerage passengers upon transatlantic steamers, two dollars. For each special permit issued for the discharge of cargo, portion of cargo or baggage brought as freight, twenty-five cents. For sanitary inspection of every vessel after the discharge of cargo or ballast, ten dollars. For fumigation and disinfection of every vessel from an infected port, or of such vessel as in the judgment of the health officer shall require fumigation and disinfection by reason of exposure to infection or contagion, fifty dollars, or such sum not more than fifty dollars or less than five dollars, as may in the judgment of the health officer be deemed reasonable, during a single quarantine. For boarding every vessel and giving a permit between sunset and sunrise, at the request of the owner, consignee or master of the vessel, when such pratique can be given without danger to the public health, five dollars. The health officer shall board such vessels and give a permit between sunset and sunrise, at the request of the owner, consignee or master of the vessel, when such pratique can be given without danger

R. S., 9th ed , pp. 885-6.

to the public health. For vaccination of persons on vessels, on board of which small-pox has developed during the voyage, each twenty-five cents. But no charge shall be made for the vaccination of any person who shall have been successfully vaccinated by the medical officer of the ship. He shall report annually to the board of quarantine commissioners all fees received by him. He shall pay all the salaries and wages of the deputy health officers and such bargemen, nurses and stewards as may be necessary for the performance of the duties imposed upon him by law for the carrying on of the quarantine establishment, except the salaries of the commissioners of quarantine, and shall pay the current expenses of running a steamboat for the transportation of persons to and from the establishment, for visitation and for burying the dead, and the salaries of the officers and employes appointed by the quarantine commissioners or by the president of the board. The health officer shall be entitled to receive a total compensation of twelve thousand five hundred dollars per annum, and in case the aggregate amount of such fees remaining in the hands of the health officer at the end of each year, during which he shall continue in office, after payment by him of the salaries, wages and expenses which he is required by law to pay, shall be less than the sum of twelve thousand five hundred dollars, the quarantine commissioners shall ascertain by proper proofs, to be approved by the attorney-general and filed with the comptroller, the amount of such deficiency, and shall pay the same to such health officer out of any unexpended moneys in their hands. In case the aggregate amount of fees exceeds the sum of twelve thousand five hundred dollars per annum, and the expenses to be paid out of the same specified in this section, the surplus shall be used for the purchase of necessary books and microscopes and other necessary appliances, as the health officer may require, or for the preservation and repair of the structures belonging to the quarantine establishment. The commissioners shall keep an account of all moneys received or disbursed by them under this section. This section shall not affect the liability of masters or owners of vessels, passengers or other persons to pay for such services, labor or work as they are respectively required to pay or discharge by law. [*Thus am. by L.* 1896, *ch.* 465, *taking effect May* 9, 1896.]

R. S., 9th ed., p. 889.

§ 145. **Admission to examination.**—The regents shall admit to examination any candidate who pays a fee of twenty-five dollars and submits satisfactory evidence, verified by oath, if required, that he

1. Is more than twenty-one years of age;
2. Is of good moral character;
3. Has the general education required preliminary to receiving the degree of bachelor or doctor of medicine in this state;
4. Has studied medicine not less than four full school years of at least nine months each, including four satisfactory courses of at least six months each, in four different calendar years in a medical school registered as maintaining at the time, a satisfactory standard. New York medical schools and New York medical students shall not be discriminated against by the registration of any medical school out of the state, whose minimum graduation standard is less than that fixed by statute for New York medical schools. The regents may, in their discretion, accept as the equivalent for any part of the third and fourth requirement, evidence of five or more years' reputable practice, provided that such substitution be specified in the license;
5. Has either received the degree of bachelor or doctor of medicine from some registered medical school, or a diploma or license conferring full right to practice medicine in some foreign country. The degree of bachelor or doctor of medicine shall not be conferred in this state before the candidate has filed with the institution conferring it the certificate of the regents that before beginning the first annual medical course counted toward the degree unless matriculated conditionally as hereinafter specified (three years before the date of the degree), he had either graduated from a registered college or satisfactorily completed a full course in a registered academy or high school; or had a preliminary education considered and accepted by the regents as fully equivalent; or held a regents' medical student certificate, granted before this act took effect; or had passed regents' examinations as hereinafter provided. A medical school may matriculate conditionally a student deficient in not more than one year's academic work or twelve counts of the preliminary education requirement, provided the name and deficiency of each student so matriculated be filed at the regents' office within three months after matriculation, and that the deficiency be made up before the student begins the second annual medical course counted toward the degree.

R. S., 9th ed., pp. 889, 845.

Students who had matriculated in a New York medical school before June fifth, eighteen hundred and ninety, and students who had matriculated in a New York medical school before May thirteen, eighteen hundred and ninety-five, as having entered before June fifth, eighteen hundred and ninety on the prescribed three years study of medicine, shall be exempt from this preliminary education requirement.

A medical student certificate may be earned without notice to the regents of the conditional matriculation either before the student begins the second annual medical course counted toward the degree or two years before the date of the degree for matriculants in any registered medical school, in the four cases following:

1. For matriculants prior to May ninth, eighteen hundred and ninety-three, for any twenty counts, allowing ten for the preliminaries, not including reading and writing;

2. For matriculants prior to May thirteen, eighteen hundred and ninety-five, for arithmetic, elementary English, geography, spelling, United States history, English composition and physics, or any fifty counts, allowing fourteen for the preliminaries;

3. For matriculants prior to January first, eighteen hundred and ninety-six, for any twelve academic counts;

4. For matriculants prior to January first, eighteen hundred and ninety-seven, for any twenty-four academic counts;

But all matriculants, after January first, eighteen hundred and ninety-seven, must secure forty-eight academic counts, or their full equivalent, before beginning the first annual medical course counted toward the degree, unless admitted conditionally, as hereinbefore specified when the deficiency must be made up before the student begins the second annual medical course counted toward the degree. [*Thus am. by L.* 1895, *ch.* 636, *and L.* 1896, *ch.* 111, § 2 *of which reads as follows:*

"This act shall take effect immediately, except that the increase in the required course of medical study from three to four years shall take effect January first, eighteen hundred and ninety-eight, and shall not apply to students who matriculated before that date and who received the degree of doctor of medicine before January first, nineteen hundred and two."]

[The first paragraph of article IX is amended as follows]:

DEFINITIONS AS USED IN THIS ARTICLE.

The terms university, regents and physician have respectively the meaning defined in article eight of this chapter. Board, where not otherwise limited, means the state board of dental examiners. Registered medical or dental school means a medi-

cal or dental school, college or department of a university, registered by the regents as maintaining a proper educational standard and legally incorporated. Examiner, where not otherwise qualified, means a member of the board. [*Thus am. by L.* 1895, *ch.* 626; *L.* 1896, *ch.* 297, *taking effect April* 17, 1896.]

§ 161. **State board of dental examiners.**— On the first day of August, eighteen hundred and ninety-five, the state board of censors of the Dental Society of the State of New York, as the latter body shall be composed at the date of such appointment, shall become the state board of dental examiners. The existing division of said censors into four classes and their terms of office shall remain the same for the said board, except that said terms shall expire on the thirty-first day of July in each year. Before the day when the official terms of the members of any of said classes shall expire, the regents shall appoint their successors, to serve for the term of four years from said day. Such appointments shall be made from nominations in number twice the number of the outgoing class made by such society to the regents prior to the third Tuesday in May of each year. In default of such nominations, the regents shall appoint such examiners from the legally qualified dentists in the state belonging to the State Dental Society. The regents in the same manner, shall also fill vacancies in the board that may occur. All nominations and appointments shall be so made that every vacancy in the board shall be filled by a resident of the same judicial district in which the last incumbent of the office resided. The board shall convene at the call of the secretary of the regents within not less than two weeks after appointment and organize by electing to serve for one year, a president and secretary. These officers shall be elected annually. No person shall be appointed an examiner unless he has received a dental degree from a body lawfully entitled to confer the same, and in good standing at the time of its conferment, and has been engaged within the state during not less than five years prior to his appointment in the actual and lawful practice of dentristry. Nor shall any person connected with a dental college as professor or instructor be eligible to such appointment. Cause being shown before them the regents may remove an examiner from office upon proven charges of inefficiency, incompetency, immorality or professional mis-

R. S., 9th ed., p. 846.

conduct. [*Thus am. by L.* 1895, *ch.* 626; *L.* 1896, *ch.* 297, *taking effect April* 17, 1896.]

[The subdivisions of § 162, entitled examinations, registration, and revocation of licenses, are amended by L. 1895, ch. 626; L. 1896, ch. 297, taking effect April 17, 1896, to read as follows:]

Examinations.—The regents shall admit to examination any candidate who pays the fee herein prescribed and submits satisfactory evidence, verified by oath if required, that he: First, is more than twenty-one years of age; second, is of good moral character; third, has the general education required in all cases after August first, eighteen hundred and ninety-five, preliminary to receiving the degree of bachelor or doctor of medicine in this state; and either has been graduated in course, with a dental degree from a registered dental school, or else, having been graduated in course from a registered medical school with the degree of doctor of medicine, has pursued thereafter a course of special study of dentistry for at least one year in a registered dental school, or holds a diploma or license conferring full right to practice dentistry in some foreign country and granted by some registered authority. Any member of the board may inquire of any applicant for examination concerning his qualifications and may take testimony of any one in regard thereto, under oath, which he is hereby empowered to administer. No degree in dentistry shall be conferred in this state till the candidate has satisfactorily completed a course of not less than three years in an institution registered by the regents of the university as maintaining proper dental standards, nor before the candidate has filed with the institution conferring it the certificate of the regents that three years before the date of the degree he has either been graduated from a registered college or satisfactorily completed a full course in a registered academy or high school; or had a preliminary education considered and accepted by the regents as fully equivalent; or had passed regents' examinations representing, for degrees conferred in eighteen hundred and ninety-eight, one year of academic work, for degrees conferred in eighteen hundred and ninety-nine, two years of academic work, and for degrees conferred in nineteen hundred a full high school course. The regents may, in their discretion, accept as the equivalent for any part of the third or fourth re-

quirement evidence of five or more years reputable practice, provided that such substitution be specified in the license.

Registration.—Every person practicing dentistry in this state and not lawfully registered before this act takes effect, shall register in the office of the clerk of the county where his place of business is located, in a book kept by the clerk for such purpose, his name, age, office and post-office address, date and number of his license to practice dentistry and the date of such registration, which registration he shall be entitled to make only upon showing to the county clerk his license or a duly authenticated copy thereof, and making an affidavit stating name, age, birthplace, the number of his license and the date of its issue; that he is the identical person named in the license; that before receiving the same he complied with all the preliminary requirements of this statute and the rules of the regents and board as to the terms and the amount of study and examination; that no money, other than the fees prescribed by this statute and said rules, was paid directly or indirectly for such license, and that no fraud, misrepresentation or mistake in a material regard was employed or occurred in order that such license should be conferred. The county clerk shall preserve such affidavit in a bound volume and shall issue to every licentiate duly registering and making such affidavit, a certificate of registration in his county, which shall include a transcript of the registration. Such transcript and the license may be offered as presumptive evidence in all courts of the facts stated therein. The county clerk's fee for taking such registration and affidavit and issuing such certificate, shall be one dollar. A practicing dentist having registered a lawful authority to practice dentistry in one county of the state and removing such practice or part thereof to another county, or regularly engaged in practice or opening an office in another county, shall show or send by registered mail to the clerk of such other county his certificate or registration. If such certificate clearly shows that the original registration was of an authority issued under seal by the regents, or if the certificate itself is endorsed by the regents as entitled to registration, the clerk shall thereupon register the applicant in the latter county, on receipt of a fee of twenty-five cents, and shall stamp or indorse on such certificate, the date and his name,

R. S., 9th ed., pp. 848, 852.

preceded by the words, "registered also in ..... county," and return the certificate to the applicant.

Revocation of licenses.—If any practitioner of dentistry be charged under oath before the board with unprofessional or immoral conduct, or with gross ignorance, or inefficiency in his profession, they shall notify him to appear before them at an appointed time and place, with counsel, if he so desires, to answer said charges, furnishing to him a copy thereof. Upon the report of the board that the accused has been guilty of unprofessional or immoral conduct, or that he is grossly ignorant or inefficient in his profession, the regents may suspend the person so charged from the practice of dentistry for a limited season, or may revoke his license. Upon the revocation of any license, the fact shall be noted upon the records of the regents and the license shall be marked as cancelled, of the date of its revocation. Upon presentation of a certificate of such cancellation to the clerk of any county wherein the licentiate may be registered, said clerk shall note the date of the cancellation on the register of dentists and cancel the registration. A conviction of felony shall forfeit a license to practice dentistry, and upon presentation to the regents or a county clerk of a certified copy of a court record showing that a practitioner of dentistry has been convicted of felony, that fact shall be noted on the record of license and clerk's register, and the license and registration shall be marked cancelled. Any person who, after conviction of a felony shall practice dentistry in this state, shall be subject to all the penalties prescribed for the unlicensed practice of dentistry, providing that if such conviction be subsequently reversed upon appeal and the accused acquitted or discharged, his license shall become again operative from the date of such acquittal or discharge.

§ 171. **Qualifications for practice.**—No person shall practice veterinary medicine after July first, eighteen hundred and ninety-five, unless previously registered and legally authorized, unless licensed by the regents and registered as required by this article; nor shall any person practice veterinary medicine who has ever been convicted of a felony by any court, or whose authority to practice is suspended or revoked by the regents on recommendation of a state board. Any graduate of a veterinary school, who received his degree prior to July first, eighteen

hundred and ninety-five, and has practiced veterinary medicine in some county in New York state, but who failed to register in the veterinary medical register in the county in which he so practiced, may, on unanimous recommendation of the state board of veterinary medical examiners, receive from the regents a certificate which shall entitle him to register as a veterinary practitioner in the county of his residence or practice at any time within two months after the passage of this act. [*Thus am. by L.* 1895, *ch.* 860; *L.* 1896, *ch.* 840, *taking effect May* 22, 1896.]

[§§ 180-184 of article X, renumbered as §§ 179a-179e by L. 1896, ch. 840.]

§ 184. **Who are entitled to license.**—Any person who has had four years' experience in the practice of pharmacy, or any person who holds a certificate of registration from any board of pharmacy legally created under the laws of this state, is entitled to license as a pharmacist, and any person who has had two years' experience in the practice of pharmacy is entitled to a license as an assistant pharmacist on complying with the regulations of the state board of pharmacy and other requirements as provided in this article. Any person who, on the twenty-fourth day of May, eighteen hundred and eighty-four, was entitled to be licensed as a pharmacist, but who failed within ninety days thereafter to apply to the state board for a license, may, at any time after this chapter takes effect, on eight days' notice to the secretary of such board, apply to the supreme court, at a special term, in the district where such applicant resides, for an order directing such board to issue such license; and such court may grant such order, on proof of good cause for the neglect to so apply, and such board shall issue such license on receipt of a certified copy of such order served upon the secretary of such board. [*Thus am. by L.* 1895, *ch.* 896; *L.* 1896, *ch.* 253, *taking effect April* 15, 1896.]

§ 207a. **Cadavers.**—The governors, keepers, wardens, managers, or persons having lawful control and management of any hospital, prison, almshouse, asylum, morgue or other receptacle for corpses not interred in the counties of Onondaga, Oswego, Madison and Cortland, and the warden of the Auburn state prison, in the county of Cayuga, and every undertaker or other person in the counties of Onondaga, Oswego, Madison and Cortland, having in his lawful possession any such corpses for keeping or burial, may deliver, and they are hereby required to deliver,

R. S., 9th ed., p. 868.

under the conditions specified in this section, every such corpse in their or his possession, charge, custody or control, not placed therein by relatives or friends in the usual manner for keeping or burial, to the medical colleges or schools in said counties of Onondaga, Oswego, Madison and Cortland, authorized by law to confer either the degree of doctor of medicine, or the degree of doctor of dental surgery and to all other colleges or schools incorporated under the laws of the state in said counties for the purpose of teaching medicine, anatomy or surgery, and to any university in either of said counties having a medical preparatory course of instruction, and the professors and teachers in every such college, school or university may receive such corpses and use the same for the purposes of medical, anatomical or surgical science or study. No such corpse shall be so delivered if within forty-eight hours after death, it is desired for interment by relatives, or by friends, who will bear the expenses of its interment; nor shall a corpse be so delivered or received of any person known to have relatives, whose places of residence are also known, without the assent of such relatives; and such relatives shall be deemed to have assented thereto, unless they shall claim such corpse for the interment within twenty-four hours after being notified of the death of such person. If the remains of any person so delivered or received shall be subsequently claimed for interment by any relative or by any friend who will bear the expense of such interment, they shall be given up to such relative or friend for interment. Any person claiming any corpse or remains for interment, as provided in this section, may be required by the persons, college, school, university or officer or agent thereof, in whose possession, charge or custody the same may be, to present an affidavit stating that he is such relative or friend, and the facts and circumstances upon which the claim that he is such relative or friend is based, and, if a friend, that he will bear the expense of such interment, the expense of which affidavit shall be paid by the person requiring it. If such person shall refuse to make such affidavit, such corpse or remains shall not be delivered to him, but he shall forfeit his claim and right to the same. Any such college, school or university in either of said counties desiring to avail itself of the provisions of this section shall notify said governors, keepers,

wardens, managers, undertakers and other persons hereinbefore specified in the county where said college, school or university is situated, or in any of said adjoining counties, in which no such college, school or university is situated of such desire, and thereafter it shall be obligatory upon such governors, keepers, wardens, managers, undertakers and other persons hereinbefore specified, to immediately notify the proper officer or officers of said college, school or university, whenever there is any corpse in their possession, charge, custody or control, which may be delivered to a medical college, school or university under this section, and to deliver the same to such college, school or university. It shall be the duty of such governors, keepers, wardens, managers and persons having lawful control and management of the institutions hereinbefore mentioned, after being duly notified by any college, school or university of its desire to avail itself of the provisions of this section, to keep, if requested so to do by such college, school or university, and if provided by such medical college, school or university with a suitable book for that purpose, a true and correct record of any and all corpses thereafter coming into their possession, charge, custody, or control, and of the disposition made of the same, giving the name of such corpses if known; the dates of death and burial, if known; the names and places of residence, if known, of the relative of such corpses; the names of the persons by whom such corpses are claimed for interment and the names of the colleges, schools, universities, or persons, to whom the same are delivered, and the dates of such deliveries; which said books shall be open to the inspection of the officers and agents of such college, school or university furnishing the same and to the officers and agents of any other medical college, school or university entitled to receive corpses from the same county. If two or more colleges, schools or universities located in any one of said counties are entitled to receive corpses from the same or from said adjoining counties, they shall receive the same in proportion to the number of matriculated students in each college. The professors and teachers in every college, school or university receiving any corpse under this section, shall dispose of the remains thereof, after they have served the purposes of medical, anatomical or surgical science and study, in accordance with the

R. S., 9th ed., p. 872.

regulations of the local board of health where the college, school or university is situated. Any person neglecting to comply with or violating any provision of this section, shall forfeit and pay a penalty of twenty-five dollars for each and every such non-compliance or violation thereof, and it shall be the duty of the health officer, or person performing his duties, in the places where said medical colleges, schools or universities are situated, whenever he shall have knowledge or information of any non-compliance with, or violation of, any provision, or provisions, of this section, to sue for and recover, in his name of office, the aforesaid penalty, and to pay over the amount so recovered, less the cost and expenses of the action, to the health board of said locality, for its use and benefit. [*Added by L.* 1896, *ch.* 302, *taking effect April* 17, 1896.]

R. S., 9th ed., pp. 872-936. §§ 3-6, 22, 24, 30, 32-3, 43-4, 49, 50, 82, 101, 103-4, 110-112, 131, 136, 143, 149, 154, 170, 173, 189, 197, 212, 231, 276-281, 310-320, of the Fisheries, Game and Forest Law are amended to read as follows:

§ 3. **Terms of office of commissioners.**—The terms of office shall be five years. The governor shall nominate and appoint, by and with the advice and consent of the senate, one of the commissioners to be president of the commission. The commissioners shall designate one of their number as shell-fish commissioner, who shall have entire charge of the shell-fish work of the commission and shall certify to the commission as to whether the grounds applied for are beds of oysters of natural growth. The commissioners shall also designate one of their number to act as secretary of the board, and may remove him at their pleasure, who shall perform the duties of secretary without extra compensation and who, while so assigned, shall devote his entire time to the work of the commission. [*Thus am. by L.* 1896, *ch.* 169, *taking effect March* 31, 1896.]

§ 4. **Compensation and expenses of commissioners.**—The president shall receive an annual salary of three thousand dollars. Each of the remaining commissioners shall receive an annual salary of two thousand five hundred dollars, and each member of said board shall receive, in addition thereto, the sum of eight hundred dollars for traveling expenses, to be paid in monthly installments. [*Thus am. by L.* 1896, *ch.* 169, *taking effect March* 31, 1896.]

§ 5. **Fish culturist.**—The board of commissioners shall appoint a fish culturist not one of their number, who shall be known as the state fish culturist, and who shall have charge under the direction of the commission, of the culture of all fish in the state, and who shall receive an annual salary of three thousand dollars and necessary traveling expenses. [*Thus am. by L.* 1896, *ch.* 169, *taking effect March* 31, 1896.]

§ 6. **Office and clerical force.**—The board shall have an office in the capitol at Albany, and shall hold meetings at such office at least once each month upon such dates as they may determine, and at such other times and places as the commissioners shall appoint for the transaction of business. The commission is empowered to lease an office in the city of New York or Brooklyn for the transaction of business connected with the sale or lease of lands under water as provided by law. It shall be allowed an assistant secretary at one thousand eight hundred dollars per annum, and expenses not to exceed two hundred dollars payable monthly, and such other clerical assistance as shall be actually needed, together with the necessary contingent office expenses, and the commissioners may appoint an engineer and fix his compensation. [*Thus am. by L.* 1896, *ch.* 169, *taking effect March* 31, 1896.]

[As to jurisdiction of board to hear controversies regarding the leasing of lands under water for the cultivation of shell-fish, see L. 1896, ch. 657, *ante* p. 3686.]

§ 22. **Chief fish and game protector, and forester.**—The commission shall, from time to time, designate one of such protectors as chief fish and game protector and forester, and two others as his assistants, under whatever title he may give them, and the three protectors and foresters so designated shall hold office during the pleasure of the commission; the commissioners shall further designate another protector to act as state oyster protector, and another protector to act as protector of the waters of the Thousand Islands, and the protectors so designated shall hold office during the pleasure of the board. The chief fish and game protector and forester shall have the direction, supervision and control of the entire force. [*Thus am. by L.* 1896, *ch.* 531, *taking effect May* 11, 1896.]

§ 24. **Compensation of protectors and foresters.**—The compensation of the chief protector and forester shall be two thou-

sand dollars per annum, payable monthly, and he shall be allowed his actual and necessary traveling expenses in the performance of his duty not exceeding one thousand dollars per year. The two assistant protectors and foresters shall each receive twelve hundred dollars per year together with their traveling and incidental expenses not to exceed seven hundred and fifty dollars per year. The protector designated as state oyster protector shall receive twelve hundred dollars per year and his actual incidental and traveling expenses not exceeding four hundred and fifty dollars per year. The protector designated as protector of the waters of the Thousand Islands shall receive five hundred dollars per year and his actual, incidental and traveling expenses not exceeding four hundred and fifty dollars per year, and the thirty-one remaining protectors shall each receive five hundred dollars per annum, payable monthly, and an allowance for expenses not exceeding four hundred and fifty dollars per year, and each of the said protectors shall receive one-half of all the fines and penalties collected in actions brought upon information furnished by him after all the expenses of recovering said fines and penalties shall be paid. [*Thus am. by L.* 1896, *chs.* 531, 659, *taking effect May* 14, 1896.]

§ 30. **Special protectors and foresters.**—The board of commissioners may, in its discretion and at pleasure, appoint or remove a person recommended by the majority of the supervisors of any county or by any incorporated game club for the protection of fish and game as special protector and forester who shall possess the same powers that are enforced upon the state protectors and foresters; such special protectors and foresters shall receive no compensation from the state. They shall make similar reports to those required from state protectors and foresters. [*Thus am. by L.* 1895, *ch.* 395; *L.* 1896, *ch.* 284, *taking effect April* 17, 1896.]

§ 32. **Nets to be destroyed by protectors and foresters.**— It is the duty of every protector and forester to seize, remove and forthwith destroy any net, pound or other illegal devices for the taking of fish or game found in or upon any of the waters or islands of this state where hunting and fishing with nets or other illegal devices is prohibited or illegal or upon the shores or islands of such waters and such nets, pounds or other illegal devices are declared to be a public nuisance and shall be abated

and summarily destroyed by any game protector and forester and no action for damages shall lie or be maintained against any person for such seizure or destruction. [*Thus am. by L.* 1895, *ch.* 395; *L.* 1896, *ch.* 661, *taking effect May* 14, 1896.]

§ 33. **Expense of seizure of nets.**— The reasonable expense of any seizure, removal or destruction of such nets, pounds or other illegal devices shall be a county charge against the county in which the same shall be seized and shall be audited and paid as other county charges are paid on the certificate of such protector and forester stating the time and place of such destruction, the name of the person employed therein, the time spent thereabout, and the money advanced, if any, and to whom, and shall be verified by the oath of such protector and forester making such seizure and destruction. [*Thus am. by L.* 1895, *ch.* 395; *L.* 1896, *ch.* 661, *taking effect May* 14, 1896.]

§ 43. **Traps and artificial lights.**— Traps or any device whatsoever, to trap and entice deer, including salt licks, shall not be made, set or used, and deer shall not be caught, hunted or killed by aid or use thereof. No jack light or any other artificial light shall be used in hunting or killing or attempting to kill any deer, except from September first to September fifteenth, both inclusive. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of misdemeanor and in addition thereto shall be liable to a penalty of one hundred dollars for each violation thereof. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 654, *taking effect May* 14, 1896.]

§ 44. **Houndings.**— Deer shall not be hunted, pursued or killed with any dog or bitch in this state at any time except from the first to the fifteenth day of October, both inclusive. Dogs of the breed commonly used for hunting deer shall not be permitted by the owner or person harboring the same to run at large except between such dates in the forest where deer inhabit. Deer shall not be hunted with dogs in the counties of Saint Lawrence, Delaware, Greene, Ulster or Sullivan, except in the towns of Highland, Cumberland, Tusten, Cochecton and Bethel, in the county of Sullivan, deer may be hunted, pursued or killed with dogs, from the first to the fifteenth day of October, both inclusive. The provisions of this section as to the close season shall not apply to Long Island. If any dog or bitch of the breed

used for hunting deer shall be found hunting, pursuing or killing any deer or running at large in the forests of this state where deer inhabit, except between the first and fifteenth days of October, both inclusive, it shall be deemed prima facie evidence of the violation of the foregoing section, by the person or persons owning, using, having or harboring such dog or bitch. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of misdemeanor and in addition thereto shall be liable to a penalty of one hundred dollars for each violation thereof. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 652, *taking effect May* 14, 1896.]

§ 49. **Black and gray squirrels, hares and rabbits.**—Black and gray squirrels, hares and rabbits shall not be hunted, shot at, killed or possessed, except from the fifteenth of October to the fifteenth day of February, both inclusive. The use of ferrets in the hunting of rabbits is hereby prohibited. The provisions of this section shall not apply to Long Island. Whoever shall violate, or attempt to violate, the provisions of this section, shall be deemed guilty of misdemeanor, and in addition thereto shall be liable to a penalty of twenty-five dollars for each violation thereof. The counties of Wayne, Onondaga and Oswego are hereby exempt from the provisions of this section in so far as it relates to the killing or hunting with ferrets of hares and rabbits. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 179, *taking effect April* 1, 1896.]

§ 50. **Beaver not to be killed.** — No beaver shall be caught or killed at any time in this state. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of a misdemeanor and in addition thereto shall be liable to a penalty of fifty dollars for each beaver caught or killed in violation of this section. [*Added by L.* 1896, *ch.* 463, *taking effect May* 9, 1896.]

§ 82. **Mongolian ring-necked pheasant.**—No person shall kill, expose for sale or have in his or her possession after the same has been killed, any wild Mongolian ring-necked pheasant (phasius torquatus) prior to the year nineteen hundred. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of misdemeanor, and in addition thereto shall be liable to a penalty of twenty-five dollars for each bird

killed, trapped, snared or possessed contrary to the provisions of this section. The provisions of this section shall not apply to the county of Suffolk. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 180, *taking effect April* 1, 1896.]

§ 101. **Taking fish by drawing off water and by other devices forbidden; exception.**—No fish shall be taken by shutting or drawing off water for that purpose; provided, however, that the commissioners of fisheries, game and forest may give permission to persons owning or in charge of private ponds, reservoirs or the waters of the state, the privilege of taking therefrom carp, pickerel or other deleterious fish with nets or other devices, or by drawing off the waters from said ponds or reservoirs. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of a misdemeanor and, in addition thereto, shall be liable to a penalty of one hundred dollars for each violation thereof and ten dollors for each fish so taken. [*Thus am. by L.* 1896, *ch.* 462, *taking effect May* 9, 1896.]

§ 103. No trout of any kind, salmon trout or land-locked salmon, shall be taken from any of the waters of this state for the purpose of stocking a private pond or stream, except that the owner of such private pond may, upon the written consent of the fisheries, game and forest commission, take any such fish from any stream of water running through premises owned by him, solely for the purpose of being placed in such private pond. Whoever shall violate, or attempt to violate the provisions of this section shall be deemed guilty of a misdemeanor, and, in addition thereto, shall be liable to a penalty of twenty-five dollars for each violation thereof, and ten dollars for each fish so taken. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 368, *taking effect April* 22, 1896.]

§ 104. **Fishing through the ice in waters inhabited by trout, et cetera, forbidden.**—No fish shall be fished for, caught or killed through the ice in any waters inhabited by trout, salmon trout or land-locked salmon during the closed season for the taking of such fish. The provisions of this section do not apply to Lake Ontario, Lake Erie, the Hudson and Niagara rivers, nor to Silver lake, in the county of Wyoming, from the first day of January to the fifteenth day of February, both inclusive. Whoever shall violate or attempt to violate the provisions of this section shall

be deemed guilty of misdemeanor, and in addition thereto shall be liable to a penalty of twenty-five dollars for each violation thereof and ten dollars for each fish so caught or possessed. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 367, *taking effect April* 22, 1896.]

§ 110. **Black bass, Oswego bass, pickerel, pike or wall-eyed pike; close season.**— Black bass or Oswego bass, shall not be fished for, caught, killed or possessed except from the thirtieth day of May to the thirty-first day of December, both inclusive, and shall not be fished for, caught or killed in Lake George or Schroon lake, except from the first day of August to the thirty-first day of December, both inclusive, and shall not be fished for, caught or killed in the Schoharie river or in Foxes creek within three years from the thirty-first day of May, eighteen hundred and ninety-six, except in the month of August. Pickerel, pike, or wall-eyed pike, shall not be fished for, caught, killed or possessed except from the first day of May to the thirty-first day of January, both inclusive, except as provided in section one hundred and forty-one. Provided, however, that the commissioners of fisheries, game and forest shall have power to permit the taking or destruction of pickerel at any time in the waters inhabited by trout. The provisions of this section shall not apply to the Saint Lawrence between Tibbet's point lighthouse and the city of Ogdensburgh. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of misdemeanor and in addition thereto shall be liable to a penalty of twenty-five dollars for each fish so caught, killed or possessed. Every person fishing in the Schoharie river or in Foxes creek, or having fish in his possession caught in either of said waters, shall, whenever requested by any fish and game protector, or by any sheriff, deputy sheriff, constable, game constable or police constable, permit such officer to inspect and examine the fish taken by him or in his possession or control or in the boat, basket, creel, lock-up, or other thing occupied or possessed by him, and in case of his refusal to permit such inspection or examination he shall be liable to a penalty of twenty-five dollars for each such refusal, and such officer making such request shall have power, and he is hereby authorized, without a search-warrant, to at once proceed and make such inspection and examina-

tion of said fish, boat, basket, creel, lock-up or other thing in his possession or control, and to use such force as may be necessary for such purpose. Such refusal, if in the open season in said waters, shall be presumptive evidence that such person so refusing had intentionally taken from said waters, in said open season, and kept and not returned thereto, one black bass less than eight inches in length, in violation of this article, and if in the closed season in said waters, that he has taken one black bass from said waters during such closed season, in violation of the provisions of this section. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 531, *taking effect May* 11, 1896.]

§ 111. **Black bass not to be taken less than eight inches in length.**— No black bass, less than eight inches in length, shall be intentionally taken from any of the waters of this state, nor possessed, and in case any such fish is caught or taken the person taking it shall immediately return it to the waters from which it was taken without unnecessary injury. The provisions of this section shall not apply to the Saint Lawrence river between Tibbet's point lighthouse and the city of Ogdensburgh. Whoever shall violate the provisions of this section shall be deemed guilty of misdemeanor and in addition thereto shall be liable to a penalty of ten dollars for each fish so taken or possessed. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 531, *taking effect May* 11, 1896.]

§ 112. **Muskallonge; close season.**— Muskallonge shall not be fished for, caught or possessed, except from the thirtieth day of May to the last day of February, both inclusive. The provisions of this section shall not apply to the Saint Lawrence river between Tibbet's point lighthouse and the city of Ogdensburgh. Whoever shall violate, or attempt to violate, the provisions of this section shall be deemed guilty of misdemeanor and in addition thereto shall be liable to a penalty of twenty-five dollars for each violation, and ten dollars for each fish so caught, killed or possessed. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 531, *taking effect May* 11, 1896.]

§ 131. **Saint Lawrence river, Niagara river and Lake Champlain, fishing by certain devices prohibited.**— No fish shall be fished for, caught or killed in any manner, or by any device except angling in the waters of Saint Lawrence river, Niagara river nor

R. S., 9th ed., pp. 898-8.

in Lake Champlain in this state, except that it shall be lawful to fish with seines, machines or traps in that portion of the waters of Niagara river adjacent to and included within the limits of the town of Lewiston, county of Niagara, for the purpose of catching fish of all kinds, except black bass, yellow pike, salmon trout, whitefish, pickerel and muskallonge, during the same months in the year in which it is lawful for a citizen of the Dominion of Canada to fish in like manner and for a like purpose in that portion of the waters of said river within said dominion adjacent or opposite to those herein last aforesaid; provided, however, that no such seine, machine or trap shall be used for fishing purposes without first obtaining a license to use the same from the commissioners of fisheries, game and forests, who, upon application of a person entitled thereto, as provided herein, may grant such license upon payment of five dollars a year for each and every seine, machine or trap licensed. No license, however, shall be granted to any person except citizens of the United States of America, and except that it shall be lawful to take bullheads, eels, suckers, catfish and pike or pickerel in Lake Champlain, except during the months of March, April and May, and in the waters of Niagara river during the months of November, December, January and March it shall be lawful to take all fish excepting black bass and muskallonge with a seine, providing that permission so to do has been first obtained from the commissioners of fisheries, game and forests, and fish taken contrary to the provisions of this section shall not be knowingly possessed. No fish shall be taken from the waters of Silver lake or the marshes adjoining such lake, by any means or device whatever, during the months of March and April. Whoever shall violate or attempt to violate the provisions of this act shall be deemed guilty of misdemeanor, and in addition thereto, shall be liable to a penalty of one hundred dollars for each violation thereof. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 783, *taking effect May* 20, 1896.]

§ 136. **Taking shad, herring and other fish in the Hudson and Delaware rivers, and other waters.**—Shad, herring and other fish shall not be taken from the Hudson or Delaware rivers or Rondout creek with nets of any kind. Shad and herring shall not be taken from Rondout creek or the Hudson or Delaware

rivers between the fifteenth day of June or the fifteenth day of March following; between the fourteenth day of March and the fifteenth day of June shad and herring may be taken from said waters by nets; but said nets shall not be drawn nor fish taken therefrom between sunset on Saturday night and sunrise on Monday morning, unless by reason of the inclemency of the weather said nets cannot be drawn prior to sunset on Saturday night, in which case it shall be lawful to take fish therefrom as soon as the weather will permit, and between the first day of September and the thirtieth day of May following, bullheads, catfish, suckers, eels, pickerel, sturgeon, white and yellow perch, may be caught by means of hoop-nets, fykes, and gill-nets, in the Hudson river, Wallkill creek and in Rondout creek, below the dam at Eddyville and in Wappingers creek, and in the Ten Mile river, in the town of Dover, nets shall not be set or used north of the dam at Troy between June first and September first; sturgeon may also be taken in the waters of the Hudson river with sturgeon nets of not less than seven inches. Nothing in this section shall be construed to prohibit the catching of fish with hook and line in Rondout creek at any time. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 154, *taking effect April* 16, 1896.]

§ 143. **Eel-weirs.**— Eel weirs of which the laths are not less than one inch apart, may be maintained at any time in any of the waters of this state not inhabited by trout, lake trout, salmon trout, or land-locked salmon, except in the Chemung river and its tributaries in the counties of Steuben and Chemung, and except in the Susquehanna river; provided, that there be a clear passage at low water mark at some point in said weir of not less than ten feet in width for the passage of boats and fish. Eel pots of a form and character such as may be prescribed by the rules of the commissioners of fisheries, may be used in any waters not inhabited by trout, lake trout, salmon trout, or land-locked salmon. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of misdemeanor, and in addition thereto shall be liable to a penalty of fifty dollars for each and every eel weir or eel pot built or maintained in violation of this section, and ten dollars for each fish caught therein in violation of this section. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 658, *taking effect May* 14, 1896.]

R. S., 9th ed., pp. 897-8, 901.

§ 149. **Frost fish and white fish may be taken with nets in certain lakes.**—Frost fish and white fish may be taken from the waters of Otsego lake in the county of Otsego, from the first day of May to the thirty-first day of August, both inclusive, with seines having meshes not less than one and three quarter inches bar, provided however, that such fishing with seines shall only be done in the daytime, between sunrise and sunset, and pickerel may be taken through the ice in said lake, by tip-ups or set lines; and frost fish, white fish or Otsego bass, lake trout, perch, eels, and pickerel may be taken from the waters of said lake by rod and reel or by hook and line held in hand from the first day of January to the thirty-first day of October, both inclusive. Frost fish, white fish, catfish, sunfish, pumpkin seeds, bullheads, perch and suckers may also be taken with nets from inland lakes not inhabited by brook trout during such period, and in such manner and under such rules and regulations as the commissioners of fisheries, game and forest may prescribe, which rules and regulations may be amended or abrogated at any time. Such rules may be either general or special at the option of the commissioners and may be published in such manner as they may deem proper. Whoever shall violate or attempt to violate such rules and regulations or the provisions of this section shall be deemed guilty of misdemeanor and in addition thereto shall be liable to a penalty of one hundred dollars for each violation thereof. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 150, *taking effect March* 27, 1896.]

§ 154. It shall be lawful to fish in the waters of Seneca lake with nets or seines, the meshes of which shall not be less than a two inch bar, from the first day of June to the thirtieth day of September, both inclusive, provided that permission so to do has been first obtained and a license secured from the commissioners of fisheries, game and forests. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of a misdemeanor and in addition thereto shall be liable to a penalty of fifty dollars for each violation thereof. [*Added by L.* 1896, *ch.* 660, *taking effect May* 14, 1896.]

§ 170. **Deer.**—Shooting at, hunting with dogs or otherwise, or killing deer is prohibited, except during each Wednesday in the month of November in each year. Whoever shall violate or

attempt to violate the provisions of this section shall be deemed guilty of misdemeanor and in addition thereto shall be liable to a penalty of one hundred dollars for each violation thereof. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 144, *taking effect March* 27, 1896.]

§ 173. **Supervisors of Queens and Suffolk counties; powers conferred.**— The boards of supervisors of the counties of Queens and Suffolk shall, in addition to the powers herein conferred upon boards of supervisors, have power to pass rules, regulations, laws and ordinances permitting, regulating, controlling or prohibiting the taking of fish and shellfish from or in the salt water of either of such counties. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 975, *taking effect May* 28, 1896.]

§ 189. **Oyster beds protected.**— Sub. 1. No person shall fish for, take or catch any oysters or hard clams between half an hour after sunset and half an hour before sunrise, except in the waters of Kill von Kull and the Arthur Kill. No person shall in any wise interfere with, take, disturb or carry away the oysters of another lawfully planted or cultivated in any of the waters of the state, or remove any stakes or bouys or any boundary marks of any planted or cultivated beds. The presence of any person on said beds with dredges or tongs overboard shall be considered prima facie evidence of guilt. Whoever shall violate or attempt to violate the provisions of this subdivision shall be guilty of a misdemeanor and in addition thereto shall be liable to a penalty of one hundred dollars for each violation thereof.

2. All sheriffs, deputy sheriffs and constables, shall, and any other person may, seize any boat or vessel used by any person or persons in violation of subdivision one of this section, together with the tackle, apparel and furniture of said boat or vessel wherever found, within one year after such violation, and shall forthwith give notice thereof to any justice of the peace of the county where the seizure was made.

3. The justice of the peace, to whom such notice is given as provided in subdivision two of this section, shall forthwith fix a time and place for trial, and give at least six days' previous notice of the same to the person or persons in possession of said boat or vessel at the time of such seizure, and also to the owner thereof, if said persons entitled to such notice are known and

R. S., 9th ed., pp. 905, 907.

are residents of the county within which the seizure is made. If any of the persons entitled to such notice are unknown or are nonresidents of the county where the seizure is made, then the said justice of the peace shall order that a notice directed to such person or persons, if known, or if unknown, then generally to whom it may concern, be published once a week, for two successive weeks, in a newspaper published in the said county, which notice shall contain, as near as may be, a description of the boat, vessel or property seized, a concise statement of the grounds of seizure thereof and the time and place fixed by the said justice of the peace for trial, which time shall not be less than six days from the day of the last publication of such notice.

4. At the time and place fixed by the said justice of the peace for trial, or at such time and place to which the said justice of the peace may adjourn the same, he shall determine by the evidence taken by him whether such boat, vessel or property was used in interfering with, taking, disturbing or carrying away oysters or other shell fish in violation of any provisions of this section, and if said justice of the peace shall determine that said boat, vessel or property was so used, he shall order the same to be sold together with its furniture, tackle and apparel, and shall direct the manner of the sale thereof. The avails from such sale, after deducting all the charges and expenses of such seizure, trial and sale, which said justice of the peace may allow, shall be paid to the commissioners of fisheries, game and forest.

5. Any person who shall prevent or obstruct any other person from entering and seizing any boat or vessel liable to seizure under the provisions of this section, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment for not more than one year or both. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 383, *taking effect April* 23, 1896.]

§ 197. **Leases for cultivation of shell fish.**—The commissioners may make leases of lands under water for the purposes of shell fish cultivation; beds of oysters of natural growth shall not be leased unless the same have for five years ceased to produce natural oysters in sufficient quantities to enable persons engaged in the planting and cultivation of oysters to earn a livelihood by working on such lands. Such leases shall not be

made unless notice thereof has been posted for not less than three weeks in a conspicuous place in the offices of the commissioners —and in the office of the clerk of the town nearest to the lands applied for and also in the post-office nearest such lands. The letting shall be at public auction to the highest bidder and shall not be made for a less sum than twenty-five cents per acre per annum, nor for a longer period than fifteen years. The moneys received for such leases shall be paid forthwith into the treasury of the state. The lessee shall immediately cause the grounds so leased to him to be plainly marked out by stakes, buoys, or monuments, which shall be maintained by the lessee, his successor or assigns during the continuance of the lease. Any controversy respecting the boundaries of lands so leased shall be determined by the commissioners on application by any party thereto. The commissioners may remove summarily from such lands any tenants who neglect to pay rent. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 653, *taking effect May* 14, 1896.]

§ 212. **Laying out grounds for private parks.**—A person owning or having the exclusive right to shoot, hunt or fish on lands, or lands and water, desiring to devote such lands or lands and water, to the propagation or protection of fish, birds or game shall publish in a newspaper printed in the county within which such land or lands and water are situate a notice, once a week, for a term not less than four weeks in the county where the lands so described are situated, substantially describing the same and containing a clause declaring that such land or lands and water will be used as a private park for the purpose of propagating and protecting fish, birds and game. Provided, however, that all waters heretofore stocked by the state or which may hereafter be stocked by the state from any of the hatcheries, hatching stations, or by fish furnished at the expense of the state, shall be and remain open to the public to fish therein the same as though the private park law had never existed. But nothing herein contained shall be construed as affecting any rights now existing of persons owning lands or holding leases of private grounds, waters or parks prior to the passage of this act. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 319, *taking effect April* 17, 1896.]

§ 231. **Authority to bring action.**—Actions for penalties, and as provided in section two hundred and thirty, shall be brought in

the name of the people on order of the chief fish and game protector and forester, or by direction of either of the commissioners who are hereby authorized in their discretion, to employ special counsel to commence and maintain such actions, and the compensation of such special counsel may be fixed and allowed by the commissioners. [*Thus am. by L.* 1895, *ch.* 974; *L.* 1896, *ch.* 233, *taking effect April* 8, 1896.]

[§ 274 is repealed by L. 1896, ch. 908, taking effect June 15, 1896.]

§ 276. **Appointment of firewardens.**— The board of fisheries, game and forests shall appoint a firewarden in each town within the counties mentioned in section two hundred and seventy of this chapter who shall act during the pleasure of such board. In such of these towns as are particularly exposed to forest fires, or in which there is a large proportion of woodlands, or which may be specified by the fisheries, game and forest commission, the firewarden thus appointed shall divide the town into two or more districts, bounded as far as may be by roads, streams of water, dividing ridges of land, or lot lines, and appoint, in writing, one resident citizen in each district as district firewarden therein. A description of these districts and the names of the district firewardens thus appointed shall be recorded in the office of the town clerk. The firewarden shall also cause a map of the fire districts of his town to be posted in some public place together with the names of the district firewardens appointed. The cost of such map, not exceeding ten dollars, shall be a town charge. [*Thus am. by L.* 1895, *ch.* 395; *L.* 1896, *ch.* 655, *taking effect May* 14, 1896.]

§ 277. **Duties and powers of firewardens.**— On the discovery of a forest fire, or a fire in or near any woods, the firewarden of the district shall repair immediately to the place where the fire is burning, and shall take such measures as shall be necessary for its extinction or to prevent it from spreading. For this purpose he may call on any person in his district, or adjoining district or town, to go to the fire and render assistance in extinguishing it or controlling its progress, and any person refusing to act or assist when so called on or warned out shall forfeit to the people of the state the sum of ten dollars. The firewarden, where acting in general charge, may cause fences to be destroyed or furrows to be ploughed to check the running of fire; or, in case

of great danger, back-fires may be set along a road or stream or other line of defense to clear off the combustible material before an advancing fire. No action for trespass shall be brought by any owner of lands for entry made upon his premises by persons going to assist in extinguishing a forest fire, although such fire may not be upon his land. The firewarden of every town in which a forest fire of more than one acre in extent has occurred within a year, shall report to the board of fisheries, game and forests, the extent of area burned over, to the best of his information, together with the probable amount of property destroyed, specifying the value of timber, as near as may be, and amount of cord-wood, logs, bark, or other forest products, and of fences, bridges and buildings that have been burned. He shall make inquiries and report as to the causes of such fires, if ascertainable, and as to the measures employed and found most effectual in checking their progress. A consolidated summary of these returns by counties, and of the information relating to the same matter otherwise gathered, shall be included in the annual report of the board of fisheries, game and forests. [*Thus am. by L.* 1895, *ch.* 395; *L.* 1896, *ch.* 655, *taking effect May* 14, 1896.]

§ 278. **Compensation of firewardens.**—For their services while on duty at a forest or woodland fire, or in connection with the prevention of fires, the firewardens shall receive a compensation of two dollars and fifty cents per day for the time actually employed; and each person assisting in extinguishing a forest or woodland fire, or who shall have been ordered to go to the place where such fire may be burning, shall receive a compensation of two dollars per day for the time actually employed. The services of the town firewarden, district firewarden, or persons assisting or ordered out at a forest fire shall be a town charge, and shall be audited and paid by the town; but the comptroller of the state shall annually pay to the town a sum equal to one-half the expenses thus incurred, audited and paid. In order to secure such payment from the state, all bills for the services of the town firewarden, district firewardens, or persons assisting or ordered out at a forest or woodland fire, shall be made out in duplicate and approved by the town firewarden, one of which bills shall be forwarded to the board of fisheries, game and forests, and to

R. S., 9th ed., pp. 924–5.

which bill there shall be attached a certificate of the town board of auditors stating that said bill has been audited and paid; and no payment of moneys or rebate of any kind, for expenses incurred in the extinguishment or prevention of forest fires shall be made to the town by the comptroller, except on such bills, which must also be approved by the board of fisheries, game and forests or by such official in their employ as they may designate to perform such duty. [*Thus am. by L.* 1895, *ch.* 395; *L.* 1896, *ch.* 655, *taking effect May* 14, 1896.]

§ 279. **Supervisors to be firewardens ex officio.**— In all towns not within the counties mentioned in section two hundred and seventy of this act the supervisors shall be firewardens ex-officio, and there shall be applicable to them all the provisions of this act with reference to town and district firewardens. If a forest fire occurs in any town in which the firewarden or supervisor may be absent, or may fail to take measures to extinguish the fire, or in which no firewarden may have been appointed, any justice of the peace in the town where such fire occurs may act as firewarden and summon assistants; and for all such services payment shall be made the same as hereinbefore provided for a firewarden and his assistants. Any person who shall willfully or negligently set fire to, or assist another to set fire to any waste or forest lands belonging to the state or to another person, whereby such forests are injured or endangered; or who suffers any fire upon his own lands to escape or extend beyond the limits thereof to the injury of the woodlands of another or of the state, is guilty of a misdemeanor, punishable by imprisonment not exceeding one year, or by a fine not to exceed two hundred and fifty dollars, or both, and be liable to the person injured for all damages that may be caused by such fires. [*Thus am. by L.* 1895, *ch.* 395; *L.* 1896, *ch.* 655, *taking effect May* 14, 1896.]

§ 280. **Actions for trespass upon forest preserve and disposition of penalties.**—The board of fisheries, game and forest may bring, in the name of the people of the state, any action to prevent trespass upon, or injury to the forest preserve, and recover damages therefor, or to recover lands properly forming a part of the forest preserve, and occupied or held by persons not entitled thereto, or for the maintenance and protection of the forest pre-

serve which any owner of lands would be entitled to bring, or for cutting or carrying away or causing to be cut or assisting to cut or carry away, any tree, bark or timber within the forest preserve, or removing any tree, wood, timber or bark or any portion thereof from such forest preserve, or from any land or lands now owned by the state or which may hereafter be acquired by the state. Every person violating the provisions of this section, relating to the cutting or carrying away any wood, timber, tree or bark, shall be deemed guilty of a misdemeanor, and in addition shall forfeit to the state the sum of ten dollars for every tree, cut or carried away by him, or by any person in his employ or under his direction. The board of fisheries, game and forest may employ attorneys and counsel to prosecute any such action of trespass or damage to the state or of forest land or to defend any such action brought against the board or any of its members, or any person acting under or by authority of the board of fisheries, game and forest, arising out of their or his official conduct with relation to the forest preserve, together with all lands, now owned or which may hereafter be acquired by the state. The compensation of such attorneys and counsel shall be fixed by the board. A preliminary or final injunction shall, on application in an action brought by or at the instance of the board of fisheries, game and forest, be granted restraining any act or trespass, waste or destruction upon the forest preserve or other lands owned by the state or which may hereafter be acquired by the state. All such actions shall be brought in the county where the trespass is alleged to have been committed, the same as other actions are now brought, by or under the direction of either of the commissioners of fisheries, game and forest, or on order of the chief fish and game protector and forester, in the manner provided in section two hundred and thirty-one of chapter nine hundred and seventy-four of the laws of eighteen hundred and ninety-five. Witness and other fees and disbursements and full costs shall be recovered in any judgment in favor of the people, under this act, at the rate fixed by section three thousand two hundred and fifty-one of the code of civil procedure, without regard to the amount recovered. All moneys recovered under the provisions of this chapter, either upon criminal or civil prosecution, shall be paid to the board of commissioners, to be by it dis-

posed of as hereinafter provided, and it shall be the duty of every person to whose hands such money shall come, to forthwith pay over the same to the said commission, and in case of failure so to do, such money may be recovered from such person in the name of the people by the commission. The commission shall dispose of the fines and penalties received by them as follows: They shall deduct all expenses incurred in the prosecution or collection of such fines and penalties, and shall pay to the protector and forester, or special protector or forester, upon whose information the action was brought, one-half of all recoveries, less the costs where the total net amount recovered, upon such information, does not exceed fifty dollars. Such payments shall be made on the certificate of the chief game protector and forester that such protector and forester is entitled thereto. The remainder of the moneys shall be used in the employment of surveyors and other persons in assisting in procuring evidence to establish cases of trespass, and other violations of this chapter, and in payment of expenses of enforcing the laws for the preservation of fish and game on the certificate of the chief protector and forester, or for such other purposes within the scope of this chapter as the board may determine, provided that the board of commissioners of fisheries, game and forest shall deposit all moneys received for violations of the fish, game and forest laws, and on account of trespasses of the state land, in some bank of the city of Albany, to be approved by the comptroller. The board shall render to the comptroller, on or before the tenth day of each month, an itemized monthly account, showing its receipts and disbursements on account of such fines and penalties, with the names of the persons from whom recovered, and to whom paid, which account shall also include the balance in the bank on the last day of the preceding month. [*Thus am. by L.* 1895, *ch.* 395; *L.* 1896, *ch.* 114, *taking effect March* 25, 1896.]

§ 281. **Fallow fires.**— It shall be unlawful for any person to light fires for the purpose of clearing land, burning fallows, stumps, logs, or fallen timber, in the towns hereinafter specified in this section, between April first and June tenth, and between September first and November tenth; but from June tenth to September first such fires may be started upon giving three days' notice to a firewarden or district-firewarden and securing his

written permission. During the period last mentioned, if the place where a fire is to be lighted is near any woodlands or forest which might possibly be endangered by the lighting of such fire, it shall be the duty of the town-firewarden or district-firewarden to be present personally when the fire is lighted, and to remain until it is extinguished; and the firewarden or district-firewarden thus in attendance shall not permit the starting of any fallow fires, or brush fires, or fires for clearing land, during a dangerous wind, nor until the person desirous of starting such fires shall have employed at his own expense a sufficient number of persons to watch and prevent any possible spreading of the flames, and who shall remain on watch until the fire is out and completely extinguished. The services of a firewarden or district-firewarden at such times shall be a town charge, the same as when employed in extinguishing a forest fire; and one-half of the expense thus incurred by the town may be refunded by the comptroller of the state as hereinbefore provided in case of forest fires. Any person violating the requirements of this section by lighting fallow fires or fires for clearing land otherwise than as herein provided, shall be guilty of a misdemeanor, and in addition thereto shall be liable to a fine of not less than fifty dollars nor more than three hundred dollars, one-half of which amount shall be paid to the person or persons furnishing the evidence necessary to conviction. The provisions of this section shall apply to Hamilton county, and to the towns of Minerva, Newcomb, North Hudson, Schroon, Keene, Jay, Lewis, North Elba, Saint Armand, and Wilmington, of Essex county; to the towns of Waverly, Harrietstown, Brandon, Santa Clara, Brighton, Belmont, Franklin, Duane, and Altamont, of Franklin county; to the towns of Hopkinton, Colton, Clifton, Fine, Edwards, Pitcairn, Clare, Russell, and Parishville, of Saint Lawrence county; to the towns of Diana, Croghan, Watson, Greig, and Lyonsdale, of Lewis county; to the towns of Wilmurt, Ohio, Salisbury, Remson, and Russia, of Herkimer county; to the town of Forestport in Oneida county; to the towns of Stratford, Caroga, Bleecker, and Mayfield, of Fulton county; to the towns of Day, Edinburgh, Hadley, and Corinth, of Saratoga county; to the towns of Johansburgh, Thurman, and Stony Creek, of Warren county; to the towns of Putnam, Dresden, and Fort Ann, of Washington

county; to the towns of Altona, Dannemora, Ellenburgh, Saranac, and Black Brook, of Clinton county; to the towns of Denning, Hardenburgh, Shandaken, Olive, Rochester, Wawarsing, and Woodstock, of Ulster county; to the towns of Neversink and Rockland, of Sullivan county; to the towns of Andes, Colchester, Hancock, and Middletown, of Delaware county; and to the towns of Hunter, Jewett, Lexington, and Windham, of Greene county. [*Thus am. by L.* 1895, *ch.* 395; *L.* 1896, *ch.* 655, *taking effect May* 14, 1896.]

ARTICLE XV.*

Special Provisions as to the Waters of the Thousand Islands.

Section 310. Article to apply to certain waters of the St. Lawrence river.
311. Protector to be appointed.
312. Definition of black bass.
313. Black bass, pickerel, pike, wall-eyed pike and muskallonge; close season.
314. Fishing through the ice prohibited.
315. Black bass, limit as to size.
316. Black bass, limit as to catch.
317. Fishing by certain devices prohibited.
318. Unlawful devices and explosives prohibited.
319. Duty of anglers to exhibit their catch.
320. Right of protector to make search or examination.

§ 310.* **Article to apply to the Saint Lawrence river between Tibbet's point lighthouse and the city of Ogdensburgh only.**— This article applies exclusively to the waters of the Saint Lawrence river lying between an imaginary line drawn from Tibbet's point lighthouse, about four miles southwest from Cape Vincent to the Snake-island lighthouse, about four miles southwest from the city of Kingston in Ontario, and an imaginary line drawn from the northern part of the city of Ogdensburgh to the northern part of Prescott, in Ontario, situated on the opposite side of the Saint Lawrence river and to be known for the purposes of this article as "the waters of the Thousand Islands."

§ 311.* **Protector to be appointed.**— The board of fisheries, game and forest is authorized to appoint a protector, to be known as the protector of the waters of the Thousand Islands, whose duty

* This entire article was added by L, 1896, ch. 531, taking effect May 11, 1896.

it shall be to patrol, under the direction of said board, the waters of the Thousand Islands, and to enforce the provisions of this article.

§ 312.* **Definition of black bass.**— Black bass, under this article, includes small-mouthed black bass, and large-mouthed black bass, otherwise known as Oswego bass.

§ 313.* **Black bass, pickerel, pike, wall-eyed pike and maskinonge; close season.**— Black bass, pickerel, pike and maskinonge, commonly called muskallonge, shall not be fished for, caught, killed or possessed in the waters of the Thousand Islands, between the first day of January and the ninth day of June, both inclusive. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of misdemeanor, and in addition thereto shall be liable to a penalty of twenty-five dollars for each fish so caught, killed or possessed.

§ 314.* **Fishing through the ice prohibited.**— No fish shall be fished for, caught or killed in any manner, or by any device, through the ice in the waters of the Thousand Islands, between the first day of January and the ninth day of June, inclusive. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of misdemeanor, and in addition thereto shall be liable to a penalty of one hundred dollars for each violation thereof.

§ 315.* **Black bass not to be taken less than ten inches in length.**— No black bass less than ten inches in length shall be intentionally taken alive from the waters of the Thousand Islands, nor shall the same be killed or possessed, and in case any such fish is caught or taken, the person taking it shall immediately place such fish back in the waters from which it was taken without unnecessary injury. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of misdemeanor, and in addition thereto shall be liable to a penalty of twenty-five dollars for each violation thereof, and ten dollars for each fish so taken, killed or possessed.

§ 316.* **Limit as to catch of black bass.**— No person shall take, catch, kill or possess more than twelve black bass of the size permitted by this article in any one day. Where two or more persons are fishing or angling from the same boat the aggre-

* This entire article was added by L. 1896, ch. 531, taking effect May 11, 1895.

R. S., 9th ed., p. 986.

gate number of bass taken, caught, killed or possessed by the occupants of said boat in any one day shall not exceed twenty-four. Whoever shall violate or attempt to violate the provisions of this section shall be liable to a penalty of twenty-five dollars for each fish so taken, caught, killed or possessed in addition to the number hereby allowed.

§ 317.* **Fishing by certain devices prohibited.**— No fish shall be fished for, caught or killed in any manner or by any device except angling in the waters of the Thousand Islands, except that it shall be lawful to take minnows for bait in the manner provided for by section one hundred and forty-five of this act; provided, however, that if any black bass, pickerel, pike, wall-eyed pike or maskinonge are taken in such nets they shall be immediately returned to the waters alive. Whoever shall violate or attempt to violate the provisions of this section shall be deemed guilty of misdemeanor, and in addition thereto shall be liable to a penalty of one hundred dollars for each violation thereof.

§ 318.* **Unlawful devices and explosives prohibited.**— The use of dynamite or other explosives in any of the waters of the Thousand Islands is prohibited except for mining and mechanical purposes. The possession by any person on the shores or islands of the waters of the Thousand Islands of dynamite or other explosives where the use of the same is prohibited by this section, shall be deemed a violation thereof. Whoever shall violate or attempt to violate the provisions of this section shall be guilty of misdemeanor, and in addition thereto shall be liable to a penalty of one hundred dollars for each violation thereof.

§ 319.* **Duty of anglers to exhibit their catch of fish.**— Every person fishing in the waters of the Thousand Islands shall, whenever requested by any fish and game protector, permit such protector to inspect and examine the fish taken by him or in his possession, or in the boat occupied by him, and the implements by which the same were taken, and in case of his refusal to permit such examination or inspection he shall be deemed guilty of misdemeanor, and also be liable to a penalty of twenty-five dollars for each such refusal.

§ 320.* **Right of protector to make search or examination.**— In case any angler or person fishing in the waters of the Thousand Islands shall, upon the request of any fish and game

* This entire article was added by L. 1896, ch. 531, taking effect May 11, 1896.

R. S., 9th ed., p. 966.

protector, refuse permission to such protector to inspect and examine the fish taken by him or in his possession or in the boat occupied by him, or the implements by which the same were taken, such inspector shall have power and he is hereby authorized, with or without a search warrant, to examine the contents of such boat or of any box, locker, basket, crate or other package therein, or in the possession of such angler or person so fishing, for the purpose of ascertaining whether the provisions of this article have been violated, and to use such force as may be necessary for the purpose of such examination.

R. S., 9th ed., p. 966. § 88 of the Agricultural Law is amended to read as follows:

§ 88. **Receipts and apportionment of moneys for the promotion of agriculture.**— Of all moneys appropriated for the promotion of agriculture in any one year, twenty thousand dollars thereof shall be distributed in premiums by the New York State Agricultural society; two thousand dollars thereof shall be paid to each of the agricultural societies, clubs or exhibitions which shall have held annual fairs or meetings during each of the three years next preceding such appropriation, and which shall have paid at each of such annual fairs or meetings during such three years the sum of three thousand dollars as premiums for agricultural interests, exclusive of the premiums paid for trials or tests of speed, skill or endurance of man or beast, under the conditions and in the manner provided by section eighty-nine of this chapter. Seventy per centum of the balance of the amount so appropriated shall be apportioned and distributed among the various county agricultural societies and the American Institute in the city of New York; and thirty per centum thereof among the various towns and other agricultural societies, clubs or exhibitions, entitled by this section to receive thirty per centum of the moneys received by the comptroller from the tax collected from the racing associations, corporations or clubs of the state. Such apportionment and distribution shall be made by the commissioner of agriculture in the following manner. One-half of the seventy per centum to be apportioned to such county agricultural societies and the American Institute in the city of New York shall be apportioned and distributed equally and the re-

mainder in proportion to the actual premiums paid during the previous year by such societies and institute, exclusive of premiums paid for trials or tests of speed, skill or endurance of man or beast. If there is no county agricultural society in any county or if it is not in active operation as such, then the town society or societies in such county, or other agricultural societies in such county that would otherwise be entitled to share under the thirty per centum distribution referred to in this section, shall share jointly in the distribution of such money on the same basis as they would if they were a county fair, provided such town societies sustain a public fair, with premium list, which premium list and reports of such town fairs shall be forwarded and made to the commissioner of agriculture. Of the thirty per centum to be distributed among the various town and other agricultural societies, clubs or exhibitions, one-third thereof shall be apportioned and distributed equally and the remainder in proportion to the premiums awarded and paid by said society, club or exposition for exhibits made at the annual fair upon the awards or premiums of which they seek a portion of the money to be distributed, exclusive of premiums paid for trials or tests of speed, skill or endurance of man or beast. No proportion of such amount shall be paid to any such society, club or exhibition in which the actual amount paid by it as such premiums in the year preceding such apportionment, is less than five hundred dollars. All revenues which have been or shall be received by the comptroller, and not distributed as heretofore provided, and all moneys received by him from the tax collected from racing associations pursuant to chapter one hundred and ninety-seven of the laws of eighteen hundred and ninety-four, and chapter five hundred and seventy of the laws of eighteen hundred and ninety-five, and all acts amendatory thereto, or hereafter otherwise collected from racing associations, corporations or clubs, shall constitute a fund which shall be annually disbursed on behalf of the state for prizes for improving the breed of cattle, sheep and horses at the various fairs throughout the state as hereinafter prescribed. Thirty per centum of the funds so collected shall be disbursed by the commissioner of agriculture among the agricultural societies, clubs or exhibitions of the state, which had not previous to May twenty-ninth, eighteen hundred and

ninety-five, received appropriations from the state, as follows: One-third shall be apportioned and distributed equally and the remainder in proportion to the premiums awarded and paid by said society, club or exposition for exhibits made at the annual fair upon the awards or premiums of which they seek a portion of the money to be distributed. Such sums shall only be paid to societies now organized and in active operation in counties having a population according to the census of eighteen hundred and ninety-two of over three hundred and twenty-five thousand inhabitants, or which shall have held fairs, annually, during each of the three years prior to May twenty-ninth, eighteen hundred and ninety-five, and which shall have paid, at their annual meeting or fairs during such three years, not less than one thousand dollars in the aggregate as premiums for agricultural, mechanical and domestic products, exclusive of the premiums paid for trials or tests of speed, skill or endurance of man or beast. Seventy per centum of such funds shall be disbursed by the commissioner of agriculture among the various county agricultural societies throughout the state, and the American Institute, in the city of New York, as follows: One-half shall be apportioned and distributed equally, and the remainder in proportion to the premiums awarded and paid by said society, club or exposition, for exhibits made at the annual fair upon the awards or premiums of which they seek a portion of the money to be distributed, exclusive of premiums paid for trials or tests of speed, skill or endurance of man or beast. If there is no county agricultural society in any county or it is not in active operation as such, then the town society or societies in such county or other agricultural societies in such county that would otherwise be entitled to share under the thirty per centum distribution referred to in this section, shall share jointly in the distribution of such money on the same basis as they would if they were a county fair, provided such town societies sustain a public fair, with premium lists and reports of such town fairs shall be forwarded and made to the commissioner of agriculture. All such societies shall hereafter, on or before the fifteenth day of December in each year, file a statement duly verified by the secretary and treasurer, showing the amount of premiums paid at the last annual fair, exclusive of premiums paid for trials or tests of

R. S., 9th ed., p. 1027.

speed, skill or endurance of man or beast, which statement shall be filed in the office of the commissioner of agriculture. No such society, other than a county society, shall be hereafter entitled to receive such appropriations in any year in which the actual amount paid by it as such premium is less than five hundred dollars. Any town or other agricultural society in a county in which there is no county agricultural society and which, according to the terms of this section receives any portion of the seventy per centum of such funds apportioned to county agricultural societies, shall not receive the portion of the thirty per centum of such funds which they would be otherwise entitled to receive. Any society, club or exposition, except the New York State Agricultural society, receiving the sum of two thousand dollars under the provisions of section eighty-nine of this act, shall not receive any other portion of the money appropriated for the promotion of agriculture. [*Thus am. by L.* 1894, *ch.* 241; *L.* 1895, *ch.* 820; *L.* 1896, *ch.* 221, *taking effect April* 8, 1896.]

[L. 1896, ch. 221, § 2, appropriates $27,213.55, being the sum collected from racing associations, to be distributed as above provided.]

R. S., 9th ed., p. 1027. The Stock Corporation Law is amended by adding §§ 57-59, reading as follows:

§ 57. **Voluntary dissolution.**— Any stock corporation, except a moneyed or a railroad corporation, may be dissolved before the expiration of the time limited in its certificate of incorporation or in its charter as follows: The board of directors of any such corporation may at a meeting called for that purpose upon, at least three days' notice to each director, by a vote of a majority of the whole board, adopt a resolution that it is in their opinion advisable to dissolve such corporation forthwith, and thereupon shall call a meeting of the stockholders for the purpose of voting upon a proposition that such corporation be forthwith dissolved. Such meeting of the stockholders shall be held, not less than thirty nor more than sixty days after the adoption of such resolution and the notice of the time and place of such meeting so called by the directors shall be published in one or more newspapers published and circulating in the county wherein such corporation has its principal office, at least once a week for three weeks successively next preceding the time appointed for holding such meeting, and on or before the day of the first publication

of such notice, a copy thereof shall be served personally on each stockholder, or mailed to him at his last-known post-office address. Such meeting shall be held in the city, town or village in which the last preceding annual meeting of the corporation was held, and said meeting may, on the day so appointed, by the consent of a majority in interest of the stockholders present, be adjourned from time to time, and notice of such adjournment shall be published in the newspapers in which the notice of the meeting was published. If at any such meeting the holders of two-thirds in amount of the stock of the corporation, then outstanding, shall, in person or by attorney, consent that such dissolution shall take place and signify such consent, in writing, then, such corporation shall file such consent, attested by its secretary or treasurer, and its president or vice-president, together with the powers of attorney signed by such stockholders executing such consent by attorney, with a statement of the names and residences of the then existing board of directors of said corporation, and the names and residences of its officers duly verified by the secretary or treasurer or president of said corporation, in the office of the secretary of state. The secretary of state shall thereupon issue to such corporation, in duplicate, a certificate of the filing of such papers and that it appears therefrom that such corporation has complied with this section in order to be dissolved, and one of such duplicate certificates shall be filed by such corporation in the office of the clerk of the county in which such corporation has its principal office; and thereupon such corporation shall be dissolved and shall cease to carry on business, except for the purpose of adjusting and winding up its business. The board of directors shall cause a copy of such certificate to be published at least once a week for two weeks in one or more newspapers published and circulating in the county in which the principal office of such corporation is located, and at the expiration of such publication, the said corporation by its board of directors shall proceed to adjust and wind up its business and affairs with power to carry out its contracts and to sell its assets at public or private sale, and to apply the same in discharge of debts and obligations of such corporation, and, after paying and adequately providing for the payment of such debts and obligations, to distribute the balance

of assets among the stockholders of said corporation, according to their respective rights and interests. Said corporation shall nevertheless continue in existence for the purpose of paying, satisfying and discharging any existing debts or obligations, collecting and distributing its assets and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts or obligations, until its business and affairs are fully adjusted and wound up. [*Added by L.* 1896, *ch.* 932, *taking effect May* 27, 1896.]

§ 58. **Merger.** — Any stock corporation lawfully owning all the stock of any other stock corporation organized for, or engaged in business similar or incidental to that of the possessor corporation may file in the office of the secretary of state, under its common seal, a certificate of such ownership, and of the resolution of its board of directors to merge such other corporation, and thereupon it shall acquire and become, and be possessed of all the estate, property, rights, privileges and franchises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the board of directors of such possessor corporation, and in its name, but without prejudice to any liabilities of such other corporation or the rights of any creditor thereof. [*Added by L.* 1896, *ch.* 932, *taking effect May* 27, 1896.]

§ 59. **Change of place of business.**—Any stock corporation now existing or hereafter organized under the laws of this state, except monied corporations, may at any time change its principal office and place of business from the city, town or county named in its certificate of incorporation, or to which it may have been changed under the provisions of this section, to any other city, town or county in this state, in which it may desire to actually transact and carry on its regular business from day to day, provided, and such change has been authorized by a vote of the stockholders of said corporation at a special meeting of stockholders called for that purpose. When such change shall be authorized by the stockholders as herein provided, the president and secretary and a majority of the directors of such corpora-

R. S., 9th ed., pp. 1037, 1085.

tion shall sign a certificate stating the name of said corporation, the city, town and county where its principal office and place of business was originally located, and to which it may have been subsequently changed, and the city, town and county to which it is desired to change its said principal office and place of business, and that it is the purpose of said corporation to actually transact and carry on its regular business from day to day at such place, and that such change has been authorized as herein provided, and the names of the directors of said corporation and their respective places of residence, which certificate shall be verified by the oaths of all the persons signing the same, and when so signed and verified, shall be filed in the office of the secretary of state and a duplicate thereof in the office of the clerk of the county from which said principal office and place of business is about to be removed or changed, and another in the office of the clerk of the county to which said removal or change is to be made, and thereupon the principal office and place of business of such corporation shall be changed as stated in said certificate. [*Added by L.* 1896, *ch.* 929, *taking effect May* 27, 1896.]

R. S., 9th ed., pp. 1035-1124. §§ 14, 25, 107, 116, sub. 5, 161, 179, 200-9 (Art. VII) of the Banking Law are amended to read as follows:

§ 14. **Deposit of bonds or mortgages with superintendent.**— Every such corporation, except banks, savings banks and domestic corporations specified in articles five, six and seven of this chapter, engaged in receiving deposits of money in trust in this state, and required to make a report of its affairs to the superintendent of banks, shall, if it has not already done so, within six months from the passage of this chapter; and every such corporation hereafter proposing to engage in such business in this state shall, before engaging in such business, transfer and assign to the superintendent registered public stocks or bonds of the United States or of this state, or of any city, county, town, village or free school district in this state, authorized by the legislature to be issued, to the amount in value, and to be at all times so maintained by the corporation, of ten per centum on its paid up capital stock, but not less in any case than one hundred thousand dollars in cities the population of which exceeds five hundred thousand inhabitants, and not less than fifty thousand

R. S., 9th ed., p. 1085.

dollars in cities containing more than one hundred thousand inhabitants and less than five hundred thousand inhabitants, and not less than thirty thousand dollars in cities containing more than twenty-five thousand inhabitants and less than one hundred thousand inhabitants, and not less than twenty thousand dollars in cities or towns of less than twenty-five thousand inhabitants, the number of inhabitants in each city or town to be ascertained by the last federal census or state enumeration. Such stocks must be registered in the name of the superintendent officially as held in trust under and pursuant to this chapter, and the same shall be held by the superintendent in trust, as security for the depositors with and the creditors of such corporation, and subject to sale and transfer, and to the disposal of the proceeds thereof by the superintendent, only on the order of a court of competent jurisdiction. Until the order of such court, authorizing such sale or transfer or other disposition thereof, the superintendent shall pay over to such corporation the interest which may be received on such securities. Should any corporation, at any time, have deposited with the superintendent more than the amount hereby required, the excess may be refunded. With the approval of the superintendent, such a deposit may be made by the corporation, either wholly or in part, in bonds or mortgages satisfactory to the superintendent, on improved, unincumbered productive real property in this state worth at least seventy-five per centum more than the amount loaned thereon. In the case of any foreign corporation (including building and loan associations organized or incorporated in any state or county outside of this state, as defined in section two of this chapter) doing business in this state, it shall deposit with the superintendent in trust as security for the depositors with and creditors of said corporation in this state one hundred thousand dollars in securities enumerated in this section. If any foreign corporation doing business in this state shall refuse or neglect to make the deposit herein required with the superintendent, the fact shall be reported by the superintendent to the attorney-general, who shall forthwith take such proceeding as may be necessary to enjoin and restrain such corporation from transacting any business in this state, and the court to which such application shall be made shall be authorized to make such

order or decree, and to issue such process in the premises to enforce compliance by the corporation with the provisions of this chapter or to restrain the transaction of business by it in this state as it may deem proper. [*Thus am. by L.* 1893, *ch.* 315; *L.* 1896, *ch.* 452, *taking effect May* 9, 1896.]

§ 25. **Restrictions.**— 1. No corporation or banker to which this chapter is applicable shall make any loan or discount to any person, company, corporation or firm, or upon paper upon which any such person, company, corporation or firm may be liable to an amount exceeding the one-fifth part of its capital stock actually paid in and surplus; but this restriction shall not apply to loans or discounts secured by collateral security worth at least fifteen per centum more than the amount or amounts loaned thereon, nor to the discount of bills of exchange drawn in good faith against actually existing values, or of commercial or business paper actually owned by the person negotiating the same, provided, however, that such loans or discounts on such collateral, or such discount of bills of exchange drawn in good faith against actually existing values, or such commercial or business paper actually owned by the person negotiating the same shall not exceed one-half the actual paid-in capital stock and surplus of such corporation or banker, including the loans first provided for in this section.

2. No such corporation nor any of its directors, officers, agents or servants shall, directly or indirectly, purchase or be interested in the purchase of any promissory note or other evidence of debt issued by it for a less sum than shall appear on the face thereof to be due. Every person violating the provisions of this subdivision shall forfeit to the people of the state three times the nominal amount of the note or other evidence of debt so purchased.

3. No president, director, cashier, clerk or agent of any such corporation, and no person in any way interested or concerned in the management of its affairs, shall as individuals discount, or directly or indirectly, make any loan upon any note or other evidence of debt, which he shall know to have been offered for discount to such corporation, and to have been refused. Every person violating the provisions of this subdivision, shall, for each offense, forfeit to the people of the state twice the amount of the loan which he shall have made.

R. S., 9th ed., p. 1043.

4. No officer, director, clerk or agent of any bank or savings bank shall borrow from the corporation with which he is officially connected any sum of money without the consent and approval of a majority of the board of directors or trustees thereof. Every person violating this provision shall, for each offense, forfeit to the people of the state twice the amount which he shall have borrowed.

5. No such corporation shall make any loan or discount on the security of the shares of its own capital stock nor be the purchaser or holder of any such shares unless such security or purchase shall be necessary to prevent loss upon debt previously contracted in good faith; and stock purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale. Every person or corporation violating the provisions of this subdivision shall forfeit to the people of the state twice the nominal amount of such stock.

6. The directors of any bank may semi-annually or quarterly declare a dividend of so much of the net profits of the corporation of which they are directors as they shall judge expedient, but each such corporation shall, before the declaration of a dividend, carry one-tenth part of its net profits earned since its last preceding dividends to its surplus fund until the same shall amount to twenty per centum of its capital. Any surplus fund already accumulated by any such corporation may be counted as part of said twenty per centum. Each corporation shall report to the superintendent of banks within ten days after declaring a dividend the amount of such dividend, and the amount of net earnings in excess of such dividend, and the amount carried to the surplus fund. Such report shall be attested by the oath of the president or cashier of the corporation. If the directors of any such corporation shall knowingly violate, or knowingly permit any of the officers, agents or servants of the corporation to violate any of the provisions of this subdivision, all the rights, privileges and franchises of the corporation shall thereby be forfeited. Such violation shall, however, be determined and adjudged by the supreme court of the state in a suit brought for that purpose by the superintendent of banks in his own name before the corporation shall be declared dissolved.

7. No saving bank hereafter incorporated shall do business or be located in the same room or in any room communicating with any bank, or national banking association. [*Thus am. by L.* 1893, *ch.* 696; *L.* 1895, *ch.* 929; *L.* 1896, *ch.* 452, *taking effect May* 9, 1896.]

§ 107. **Trustees and their powers.**— There shall be a board of not less than thirteen trustees of every such corporation, who shall have the entire management and control of all its affairs, and who shall elect from their number, or otherwise, a president and two vice-presidents, and such other officers as they may deem fit. The persons named in the certificate of authorization shall be the first trustees. A vacancy in the board shall be filled by the board, as soon as practicable, at a regular meeting after the vacancy occurs. From and after the passage of this act, no person who is not a resident of this state or against whom a judgment for any sum of money shall have been recovered or shall hereafter be recovered and remain unsatisfied of record, or unsecured upon appeal, for a period of more than three months, or who hereafter takes the benefit of any law of bankruptcy or insolvency, or who makes a general assignment for the benefit of creditors, shall be a trustee of any savings bank, and the office of any such trustee is hereby vacated. It shall be lawful for the board of trustees of every such corporation by a resolution to be incorporated in their by-laws, a copy of which shall also be filed with the superintendent of banks, to reduce the number of trustees named in the original charter of such corporation to a number not less than the minimum named in this act. Such reduction to be effected gradually by the occurrence of vacancies by death, resignation, or forfeiture, until the number is reduced to thirteen, or to such greater number as shall be designated in the aforesaid resolution; or the number of trustees may be increased to any number designated in a resolution for that purpose, where reasons therefor are shown to the satisfaction of the superintendent and his consent in writing is obtained thereto. It shall not be lawful for a majority of the board of trustees of any savings bank to belong to the board of directors of any one bank or national banking association. Where a majority of the board of trustees of any savings bank now are members of the board of directors of any one bank or national banking association, the

R. S., 9th ed., pp. 1084, 1089.

offices of such trustees of any savings bank shall, from and after the expiration of ninety days from the time of the taking effect of this act, be and become vacant; and they shall, at the expiration of such ninety days, cease to be such trustees, and the vacancies so to occur in any board of trustees of any savings bank shall before the expiration of such ninety days, be filled in accordance with the provisions of the general law relating to savings banks in such wise that a majority of trustees of such savings bank shall not be members of the board of directors or trustees of any one bank or national banking association; and whenever hereafter any trustee of a savings bank shall by becoming a director of a bank or national banking association, cause a majority of the trustees of such savings bank to be directors of any one bank or national banking association, his term of office as trustee of the savings bank shall thereupon end. Any savings bank knowingly violating this provision shall forfeit all its rights, privileges and franchises. Such violation shall be determined in the same manner as a violation of subdivision six of section twenty-five of article one of the banking law. [*Thus am. by L.* 1895, *chs.* 415, 929; *L.* 1896, *ch.* 453, *taking effect May* 9, 1896.]

§ 116, subd. 5. In the stocks or bonds of the following cities: Boston, Worcester, Cambridge, Lowell, Fall River and Springfield, in the state of Massachusetts; Saint Louis, in the state of Missouri; Cleveland, Cincinnati, and Toledo, in the state of Ohio; Detroit and Grand Rapids, in the state of Michigan; Providence, in the state of Rhode Island; New Haven and Hartford, in the state of Connecticut; Portland, in the state of Maine; Philadelphia, Pittsburg, Allegany, Reading and Scranton, in the state of Pennsylvania; Minneapolis and Saint Paul, in the state of Minnesota; Des Moines, in the state of Iowa; Milwaukee, in the state of Wisconsin; Louisville, in the state of Kentucky; Paterson, Trenton and Newark, in the state of New Jersey; Baltimore, in the state of Maryland. If at any time the indebtedness of any of said cities, less its water debt and sinking fund, shall exceed seven per centum of its valuation for purposes of taxation, its bonds and stocks shall thereafter, and until such indebtedness shall be reduced to seven per centum of the valuation for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks, but the superintendent of the banking department may, in his discretion, require any savings bank to

sell such bonds or stocks of said city, as may have been purchased prior to said increase of debt. [*Thus am. by L.* 1893, *ch.* 440; *L.* 1895, *ch.* 813; *L.* 1896, *ch.* 454, *taking effect May* 9, 1896.]

§ 161. **Directors.**—The affairs of every such corporation shall be managed, and its corporate powers exercised by a board of directors of such number, not less than thirteen nor more than twenty-four, as shall, from time to time, be prescribed in its by-laws. No person can be director who is not the holder of at least ten shares of the capital stock of the corporation. The persons named in the organization certificate or such of them, respectively, as shall become holders of at least ten shares of such stock, shall constitute the first board of directors, and may add to their number not exceeding the limit of twenty-four, and shall severally continue in office until others are elected to fill their respective places. Within six months from the time when such corporation shall commence business, the first board of directors shall classify themselves by lot, into three classes, as nearly equal as may be. The term of office of the first class shall expire on the third Wednesday of January next following such classification; the term of office of the second class shall expire one year thereafter; and the term of office of the third class shall expire two years thereafter. At or before the expiration of the term of the first class, and annually thereafter, a number of directors shall be elected equal to the number of directors whose term will then expire, who shall hold their offices for three years, or until their successors are elected. Such election shall be held at the office of the corporation, and at such time and upon such public notice, not less than ten days, by advertisement in at least one newspaper approved by the superintendent of banks, published in the city where such corporation is located, as shall be prescribed in the by-laws. In case of failure to elect any director on the day named, the directors whose terms of office do not that year expire, may proceed to elect a number of directors equal to the number in the class whose term that year expires, or such number as may have failed of re-election. The persons so elected, together with the directors whose terms of office shall not that year expire, shall constitute the board of directors until another election shall be held according to law. Vacancies occurring in the intervals of

elections shall be filled by the board. Each director when appointed or elected shall take an oath that he will, so far as the duty involves on him, diligently and honestly administer the affairs of such corporation, and will not knowingly violate, or willingly permit to be violated any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right, of the number of shares of stock required by this section, subscribed by him or standing in his name on the books of the corporation, and that the same is not hypothecated or in any way pledged as security for any loan or debt. Such oath shall be subscribed by the director making it, and certified by the officer before whom it is taken, and shall be immediately transmitted to the superintendent of banks, and filed and preserved in his office. [*Thus am. by L.* 1896, *ch.* 452, *taking effect May* 9, 1896.]

§ 179. **Security for loans.**— For every loan made, except as hereinafter provided in this section, a bond secured by a first mortgage on real estate or a second mortgage, when the first mortgage was given to and is held by the association, or when said second mortgage is given in a sum sufficient to cover any first mortgage that may be a lien on the property in addition to the sum advanced by the association, shall be given, accompanied by a transfer and pledge to the association of the shares borrowed upon and all accumulations that have or shall accrue thereon, as collateral security for the repayment of the loan; or, in lieu of the mortgage, the borrower, or another, may transfer and pledge to the association for the payment of the loan, free shares, the withdrawal value of which under the by-laws at the time of such borrowing, shall exceed the amount borrowed and interest thereon for six months, and all fines that could accrue in case the borrower should default in the payment of the dues upon the shares borrowed upon, but an association may provide by its by-laws that it will not make stock loans. If the borrower neglects to offer security satisfactory to the board of directors, within the time provided by the by-laws, his right to the loan shall be forfeited, and he shall be charged with interest and premium, if any, for one month, and all necessary expenses incurred, if any, under the by-laws in reference to the proposed loan. All bonds and mortgages given to the association shall be deemed conditioned upon the performance of the provisions of

this act relating to the payment of loans, premiums, interest and fines thereon, and the by-laws of the association, although the same may not be fully expressed therein. A borrower may repay a loan, and all arrears of interest, premium, if any, and fines thereon (or one or more shares thereof), at any stated meeting or at any time (but the by-laws may otherwise provide); when not made at a stated meeting, he shall pay interest up to the first stated meeting after such payment, or he may, by a proper notice, and direction as to the application, have the withdrawal or holding value of the shares borrowed upon, applied in payment or part payment, as the by-laws shall determine. Should there at any time be money in the treasury not called for by the borrowing or withdrawing members, the board of directors may make temporary loans to members out of the same, at such rate of interest not exceeding six per centum, and under such provisions and restrictions as the by-laws may prescribe. Such temporary loans shall not run more than ninety days and shall be secured by the personal note of the borrower, and also by a pledge of shares to the association, the withdrawal value of which shares shall be at least ten per centum more than the amount of the loan and the interest thereon to its maturity. If at any time there is money in the treasury as above in excess of the amount needed to meet the demand for such temporary loans, it may be invested in the same kind of securities and under the same restrictions as allowed to savings banks by section one hundred and sixteen of this chapter. [*Thus am. by L.* 1894, *ch.* 705; *L.* 1896, *ch.* 452, *taking effect May* 9, 1896.]

ARTICLE VII.*

Mortgage, Loan and Investment Corporations; Supervision.

Section 197. Incorporation.
198. Deposit required; authorization certificate.
199. General powers.
200. License.
201. Verified statement to be furnished.
202. Issue of license.
203. Unlicensed companies prohibited.
204. Revocation of license.
205. Designation of superintendent as attorney.

* This entire article thus am. by L. 1896, ch. 452, taking effect May 9, 1896.

R. S., 9th ed., p. 1120.

Section 197.* **Incorporation.**— Five or more persons may become a mortgage, loan or investment corporation by making, acknowledging and filing in the office of the clerk of the county where such corporation is to be established, and in the office of the superintendent of banks, a certificate in duplicate which shall state:

I. The name by which such corporation is to be known.

II. The particular city, town or village where its operations are to be carried on.

III. The amount of its capital stock, which shall in no case be less than one hundred thousand dollars.

IV. The names and places of residence of its stockholders, and the number of shares held by each.

V. The date at which said corporation shall commence and terminate.

VI. The number of directors, which shall not be less than five, and the names of the stockholders who shall be directors for the first year of its incorporation, accompanied with a declaration that each incorporator will accept the responsibilities and faithfully discharge the duties of a director therein, if elected to act as such.

Every such certificate when filed shall be recorded by the county clerk in the books kept for the record of certificates of incorporation, and by the superintendent of banks in a book to be kept by him for that purpose. Such certificate may provide for the increase of capital stock and of the number of persons forming the corporation, and for such other changes not contrary to law, as may be thought proper.

§ 198.* **Deposit required; authorization certificate.**— Upon it appearing satisfactorily to the superintendent of banks that the capital stock of said corporation has been paid in cash and upon his receiving a deposit to the amount of one thousand dollars to be held by him as a pledge of good faith and a guaranty of compliance with the banking law on the part of such corporation, to be in such securities and assigned in the same manner as specified in section fifty-seven of this chapter in reference to deposits to be made by banks and individual bankers, and that it had otherwise complied with law, he shall issue his authorization certificate as provided in section thirty of this chapter.

* This entire article thus am. by L. 1896, ch. 452, taking effect May 9, 1896.

R. S., 9th ed., pp. 1120-1.

§ 199.* **General powers.**— In addition to the powers conferred by the general and stock corporation laws, a corporation organized as provided in the two preceding sections shall have power to sell, offer for sale or negotiate bonds or notes secured by deed of trust or mortgages on real property situated in this state or outside of this state, or choses in action owned, issued, negotiated or guaranteed by it, or may receive money or property either from its own stockholders or other persons in installments or otherwise, and may enter into any contract, engagement or undertaking with such persons for the withdrawal of such money or property, at any time, with any increase thereof, or for the payment to them or to any person of any sum of money at any time, either fixed or uncertain, excepting that said corporation can not do a general deposit business without complying with the provisions of section fourteen of this chapter.

§ 200.* **License.**— The superintendent of banks may issue a license under his hand and official seal, in accordance with the provisions of this article, authorizing mortgage companies organized under the laws of any other state to transact business within the limits of this state; and the supervisory power granted by this article shall apply to all associations, copartnerships, individuals, joint-stock companies, firms or corporations organized under the laws of any other state, who sell, offer for sale or negotiate bonds or notes, secured by deed of trust, or mortgage of real property or bonds, or obligations payable in installments, or capital stock, or choses in action, owned, issued, negotiated or guaranteed by them; and to all associations, copartnerships, joint-stock companies or corporations organized as provided in sections one hundred and ninety-seven, one hundred and ninety-eight and one hundred and ninety-nine of this chapter, and the provisions of article one of this chapter shall apply to such.

§ 201.* **Verified statement to be furnished.**— The companies, associations, and others described in the preceding sections shall annually make and furnish to the superintendent of banks a true and verified statement of their financial condition in detail on blanks furnished by him for that purpose, which shall show:

1. The amount of capital actually paid in cash.
2. The amount of capital subscribed.

* This entire article thus am. by L. 1896, ch. 453, taking effect May 9, 1896.

3. The undivided profits or earnings on hand.

4. The total liabilities itemized in such form as may be indicated in the blanks.

5. The total amount of moneys loaned, invested or guaranteed.

6. The number and amount of all mortgages in arrears of interest for a period exceeding six months prior to the date of the report.

7. The number and amount of mortgages foreclosed during the past year.

8. The present cash value of all real property held or owned by foreclosure, and such other and further information concerning their business affairs and methods as the superintendent shall require.

The statement shall be signed by the officers of the association, company or corporation or other person making the same, and in such form as the superintendent shall prescribe. The superintendent may, in his discretion, require a like report, either wholly or in part, as to such particulars as he may prescribe, to be made and submitted to him at any time and within such period as he may designate. No license shall be issued unless the superintendent, either personally or by some competent person or persons appointed by him has visited and examined thoroughly into the condition, business methods and affairs generally of any company, association, corporation, copartnership or individual proposed to be licensed by him; and he may make such examination as often thereafter as he deems necessary, and such examination shall be made at least once in each year. The superintendent and every examiner appointed by him shall have power to administer an oath to any person whose testimony may be required in any such examination; and all books and papers which it may be deemed necessary to examine by the superintendent or the examiner shall be produced when demanded in writing by him. On every such examination inquiry shall be made as to the condition and resources generally of the company, corporation, association, copartnership or individual examined, the mode of conducting and managing its affairs, the advice of its directors or trustees, the investment of its funds, the safety and prudence of its management, the se-

curity afforded to those by whom its engagements are held, and whether the requirements of its charter and of law have been complied with in the administration of its affairs.

§ 202.* **Issue of license.**— If it shall appear to the satisfaction of the superintendent from such examination made, and the statement or report submitted by any such corporation, company, copartnership, firm, association or individual, pursuant to the requirements of the preceding section, that its affairs are being conducted in a safe and lawful manner, he may issue to such company, corporation, copartnership, firm or association, a license under his hand and seal, permitting it to transact business in this state for the term of one year from the date thereof.

§ 203.* **Unlicensed companies prohibited.**— No person, association, corporation, company or copartnership, shall, after the passage of this chapter, act in this state as the agent or representative of any company, corporation or others described in section two hundred of this chapter, unless the same has been duly licensed by the superintendent of banks as hereinbefore provided. Every such company, corporation, or others, described in section two hundred of this chapter, organized under the laws of any other state, shall within thirty days after being authorized to transact business in this state, file in the office of the superintendent of banks, a certificate stating the name and business address of every person, association, corporation, company, firm or others, who act or propose to act in this state as its agent or representative, and in case of any change in any such representative, an amended certificate shall be forthwith filed as herein provided. Whoever shall offend against the provisions of this section shall forfeit to the people of the state the sum of one thousand dollars for every offense.

§ 204.* **Revocation of license.**— If it shall appear to the superintendent from an examination made of, or report submitted by any licensee organized under the laws of any other state under the provisions of this article, or from sufficient information otherwise obtained, that such licensee is conducting its business and affairs in an unsafe or unauthorized manner, he shall, by an order under his hand and official seal, addressed to such licensee, direct it to discontinue such unsafe or illegal practices,

* This entire article thus am. by L. 1896, ch. 454, taking effect May 9, 1896.

R. S., 9th ed., pp. 1122-3.

and to conform to the requirements of its charter and of law, and to provide for the safety and security of its transactions. If such licensee shall neglect or refuse to make any reports as herein specified, or to comply with such order, or if it shall appear to the superintendent that it is unsafe or inexpedient for any such licensee to continue the transaction of business, he shall forthwith revoke the license granted to any such licensee, and serve a copy of the order of revocation on the company, association, corporation, copartnership or individual whose license is revoked, at its principal office for the transaction of business in this state, and also upon each agent or representative thereof within the state, specified in the certificate provided for in section two hundred and three of this chapter, by depositing the same in the post-office directed to such licensee at such principal place of business, and to each of such agents at his place of business; and the superintendent may, in his discretion, publish such order, with such other facts as he may deem proper, for six successive days in the state paper published in the city of Albany.

§ 205.* **Designation of superintendent as attorney.**—Every corporation, company, firm, association or individual, organized under the laws of any other state, thus licensed, shall, before transacting any business within this state, by an instrument in writing duly executed, appoint the superintendent of banks its true and lawful attorney upon whom all process in any action or proceeding by any resident of the state against it may be served with the same effect as if it were a domestic corporation and had been lawfully served with process in the state. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the superintendent of banks, and copies certified by him or his deputy shall be sufficient evidence thereof. Service in favor of a resident of this state upon such attorney shall be deemed a personal service upon such licensee. Whenever lawful process against such licensee shall be served upon the superintendent of banks, he shall forthwith forward a copy of the process served upon him by mail, prepaid, and directed to the president or secretary of the corporation or association at

* This entire article thus am. by L. 1896, ch. 454, taking effect May 9, 1896

R. S., 9th ed., p. 1141.

its last-named post-office address. For each copy of process, the superintendent shall collect the sum of two dollars, which shall be paid by the plaintiff or moving party at the time of such service, to be recovered by him as part of his taxable disbursements if he succeeds in his suit or proceeding. The term, process, when used in this section, includes any writ, summons, petition or order whereby any suit, action or proceeding shall be commenced by a resident of this state.

R. S., 9th ed., pp. 1141, 1146, 1184, 1233, 1241. §§ 25, 33, 125, 261, 278 of the Insurance Law are amended to read as follows:

§ 25. Jurisdiction of superintendent over foreign corporations. — The superintendent of insurance shall have the same supervision and make the same examination of the business and affairs of every foreign insurance corporation doing business in this state, as of domestic insurance corporations doing the same kind of business, and of its assets, books, accounts and general condition. Every such foreign corporation and its agents and officers shall always be subject to and be required to make the same statements and answer the same inquiries and be subject to the same examinations, and in case of default therein, to the same penalties and liabilities as domestic insurance corporations doing the same kind of business, or any of the agents or officers thereof, are or may be liable to under the laws of this state or the regulations of the insurance department. The superintendent may, whenever he deems it necessary, either in person or by a proper person appointed by him, repair to the general office of such foreign corporation, wherever the same may be, and make an investigation and examination of its affairs and conditions. He may cancel and revoke the certificate of any such foreign corporation refusing or unreasonably neglecting to comply with the provision of this section, or to allow the examination herein provided for to be made, and prevent such corporation from further continuance in business in this state. A foreign insurance corporation may transact in this state only such kinds of business as, under the laws of the state, a like domestic insurance corporation is authorized to transact; provided that any insurance corporation organized under the laws of another state of the United States and lawfully transacting

either fire or marine insurance in this state on the first day of October, eighteen hundred and ninety-two, may be licensed to transact both fire and marine insurance if duly authorized so to do by the law of the state where it is organized; provided, further, that any such corporation be possessed of a cash capital equal in amount to the cash capital required by the laws of this state for a company to do fire insurance and a company to do marine insurance. No such corporation shall transact any business in this state not specified in the certificate of authority granted by the superintendent. [*Thus am. by L.* 1896, *ch.* 845, *taking effect May* 22, 1896.]

§ 33. **Reciprocal requirements.**— If, by the existing or future laws of any state, an insurance corporation of this state having agencies in such other state or the agents thereof, shall be required to make any deposit of securities in such other state for the protection of policy-holders or otherwise, or to make payment of taxes, fines, penalties, certificates of authority, license fees or otherwise, greater than the amount required by this chapter for similar corporations of such other state by the then existing laws of this state, then and in every such case, all insurance corporations of such state established or heretofore having established an agency or agencies in this state shall be and they are hereby required to make the like deposit for the like purposes in the insurance department of this state, and to pay the superintendent of insurance for taxes, fines, penalties, certificates of authority, license fees and otherwise, an amount equal to the amount of such charges and payments imposed by the laws of such other state upon the insurance corporations of this state and the agents thereof. The superintendent of insurance may remit any of the fees and charges which he is required by law to collect, except such as he is required to collect by virtue of this section; but no discrimination shall be made in favor of one corporation over another from the same state or country. Whenever it shall appear to the superintendent of insurance that permission to transact business within any foreign country is refused to a company organized under the laws of this state, after a certificate of the solvency and good management of such company has been issued to it by the said superintendent and after such company has complied with any reason-

able laws of such foreign country requiring deposits of money or securities with the government of such country, then and in every such case, the superintendent shall forthwith cancel the authority of every company organized under the laws of such foreign government and licensed to do business in this state, and shall refuse a certificate of authority to every such company thereafter applying to him for authority to do business in this state, until his certificate shall have been duly recognized by the government of such country. [*Thus am. by L.* 1896, *ch.* 23, *taking effect February* 17, 1896.]

§ 125. **Mutual may become stock corporations.**— Any domestic mutual fire insurance corporations having surplus assets aside from premium and capital stock notes sufficient to reinsure all its outstanding risks, may, providing the superintendent of insurance give his consent thereto, and the president and directors thereof, by three-fourths vote decide to so do, so amend the charter thereof as to convert the same into a stock corporation. Such amended charter shall specify the name by which the corporation has been known, and also the name by which it desires to be known in the future, the location of its principal office; the amount of its capital stock, and the number of shares into which the same shall be divided, and the par value of each; but the amount of its capital stock shall not be less than two hundred thousand dollars. Directors and officers of such corporation shall hold their said positions respectively until the expiration of the terms for which they were elected. Their successors shall be elected as if said corporation had been originally incorporated as a stock corporation in accordance with the provisions of this chapter. When any change shall have been decided upon by three-fourths of the directors, and the consent of the superintendent shall have been given thereto, then the directors shall open books of subscription to the capital stock, and give notice of the change and that said books have been opened, and that the members of such corporation on the day when such changed charter or articles were made and filed, and the consent of the superintendent thereto granted, shall be entitled to priority in subscribing to the capital stock of such corporation as hereinafter specified, by publication once a week for six successive weeks in a newspaper published in

R. S., 9th ed., p. 1184.

the county where said corporation shall have its principal office and also in the state paper at Albany. If three-fourths of the directors of such corporation shall not give their consent thereto, such corporation, after having given notice once a week for six weeks, of its intentions to do so, and of the meeting hereinafter provided for, in the state paper and in a newspaper published in the county where such corporation is located, may, with the consent of two-thirds of the members present at any regular annual meeting, or at any special meeting duly called for the purpose, or with the consent in writing of two-thirds of the members of such corporation, unless otherwise provided in its charter, become a joint-stock corporation by conforming its charter to and otherwise proceeding in accordance with this chapter. Every member of such corporation on the day of such annual or special meeting, or the date of such written consent, or the date of the filing of the amended articles of incorporation and of the consent of the superintendent thereto, shall be entitled to priority in subscribing to the capital stock of such corporation for one month after the opening of the books of subscription, in proportion to the amount of cash premiums paid in by such member on unexpired risks in force on the day of such annual or special meeting, or the date of such written consent, or the date of the filing of such amended charter or articles and of the consent of the superintendent thereto, at the expiration of such month, then the board of directors shall sell and dispose of the capital stock which shall not have been taken by the members aforesaid, to such persons as may subscribe to the same; and when the capital stock shall have been fully subscribed to and paid in, the directors shall notify the superintendent of that fact, and thereupon the superintendent shall make or cause to be made an examination of the affairs of the said company, and if he shall find that the proceedings for the change thereof from a domestic mutual fire insurance corporation to an insurance stock corporation, have been regularly taken in conformity with this section, and that the capital stock shall have been fully subscribed for, and the amount thereof paid in, in cash, or in such securities as stock insurance corporations are entitled to hold under the provisions of this chapter for capital investments, then the superintendent shall certify that such examination has been

made, and that the proceedings have been regularly taken, the capital stock paid in and the said corporation reorganized as an insurance stock corporation, and thereupon said corporation shall come under the provisions of this chapter in the same manner as if it had been incorporated thereunder. [*Thus am. by L.* 1896, *ch.* 850, *taking effect May* 22, 1896.]

§ 261. Twenty-five or more persons residing in one or more adjoining towns, or in any county, or in one or more adjoining counties, but not including the persons residing within said town or towns, county or counties, and within the limits of an incorporated city of more than six hundred thousand inhabitants, who collectively own property of the value of fifty thousand dollars or over, may become a corporation for either of the following purposes:

1. For the purpose of co-operative insurance against loss or damage by fire or lightning.

2. For the purpose of preventing the larceny of domestic animals, horses, wagons, sleighs, harnesses, robes, blankets, whips, clothing, wearing apparel, jewelry, grain and any kind of farm produce, and all kinds of goods and property, or for the purpose of mutual insurance of such property against loss or damage by larceny, or any loss or expense incurred in recovering the same when stolen, or in the apprehension of the thief or thieves, or for all the purposes named in this subdivision, by making and acknowledging a certificate setting forth their intention to form such corporation, the county or counties or the town or towns in which it intends to do business, its corporate name, which shall embrace, in cases where the association includes one or more counties, the name of the county in which the business office of said company is located, and in case where the association includes one or more towns the name of town or towns in which its office is to be located. Every person insured in such corporation who shall sign an application for insurance as required by the certificate of incorporation, or by the by-laws of the corporation, shall thereby become a member thereof. [*Thus am. by L.* 1893, *ch.* 687; *L.* 1894, *ch.* 609; *L.* 1896, *ch.* 844, *taking effect May* 22, 1896.]

§ 278. Limitation of business; extension of territoria limits. —No corporation formed under the provisions of this article, or any such corporation formed under any similar act repealed

R. S., 9th ed., pp. 1241, 1276.

by this chapter, shall transact business in more than five counties, which shall be designated in the certificate of incorporation. Any such corporation organized and doing business under the provisions of any act repealed by this chapter, or which may be hereafter organized and do business under the provisions of this article, in one county or two or more adjoining counties, may extend its business into any number of counties, not exceeding five in all, by filing in the office of the clerk of such adjoining county or counties a duly certified copy of the certificate and statement filed in the office of the secretary of state under the provisions of section two hundred and sixty-three, and filing in the office of the secretary of state and of the county clerk of each county comprised in its territorial limits, a certificate signed by at least two-thirds of its directors, stating the counties in which such corporation proposes to do business; and upon filing such certificates and certified copies herein provided, any such corporation shall possess all the business and corporate powers, rights and privileges in the counties named in such certificate, not exceeding five, and be subject to the same liabilities as if originally organized under a certificate specifying the same counties as the territorial limits of such corporation. Any such corporation so organized and so extending and doing business in five counties may extend its business into any number of adjoining counties, not exceeding that number in all, which shall be equal to one county for each full million of dollars of its insured property in force at the time of any such extension, but such extension or extensions shall be made in all respects in the manner herein provided. [*Thus am. by L.* 1893, *ch.* 687; *L.* 1896, *ch.* 907, *taking effect May* 27, 1896.]

R. S., 9th ed., pp. 1276-7, 1281, 1291-2, 1298, 1332, 1339. §§ 44, 46, 51, 76-7, 91, 153, 170 of the Railroad Law are amended to read as follows:

§ 44. **Checks for baggage.**— A check, made of some proper metallic substance of convenient size and form, plainly stamped with numbers and furnished with a convenient strap or other appendage for attaching to baggage, shall be affixed to every piece or parcel of baggage when taken for transportation for a passenger by the agent or employe of such corporation, if there is a handle, loop or fixture therefor upon the piece or parcel of bag-

gage, and a duplicate thereof given to the passenger or person delivering the same to him. If such check be refused on demand the corporation shall pay to the passenger the sum of ten dollars, and no fare shall be collected or received from him; and if he shall have paid his fare it shall be refunded to him by the conductor in charge of the train. Such baggage shall be delivered, without unnecessary delay, to the passenger or any person acting in his behalf, at the place to which it was to be transported, where the cars usually stop, or at any other regular intermediate stopping place upon notice to the baggage-master in charge of baggage on the train of not less than thirty minutes, upon presentation of such duplicate check to the officer or agent of the railroad corporation, or of any corporation, over any portion of whose road it was transported. Bicycles are hereby declared to be and be deemed baggage for the purposes of this article and shall be transported as baggage for passengers by railroad corporations and subject to the same liabilities, and no such passenger shall be required to crate, cover or otherwise protect any such bicycle; provided, however, that a railroad corporation shall not be required to transport, under the provisions of this act, more than one bicycle for a single person. [*Thus am. by L.* 1892, *ch.* 676; *L.* 1896, *ch.* 333, *taking effect April* 20, 1896.]

§ 46. **Unclaimed freight and baggage.**— Every railroad or other transportation corporation, doing business in this state, which shall have unclaimed freight or baggage, not live stock or perishable, in its possession for the period of sixty days may deliver the same to any warehouse company, or person or persons engaged in the warehouse business, within this state, and take a warehouse receipt for the storage thereof. Upon such delivery and upon taking such warehouse receipt, every such railroad or other transportation corporation shall be discharged of all liability in respect to any such unclaimed freight or baggage from and after such delivery. At any time within two years after such delivery, such railroad or other transportation corporation shall surrender and transfer such warehouse receipt to the owner of any such unclaimed freight or baggage upon demand, and upon payment of all charges and expenses for transportation and storage then due, if any, to any such railroad or other transportation corporation. Unclaimed live stock and perishable freight or baggage may be sold by any such railroad or other transportation

corporation without notice, as soon as it can be, upon the best terms that can be obtained. All moneys arising from the sale of any such unclaimed live stock, perishable freight or baggage, after deducting therefrom all charges and expenses for transportation, storage, keeping, commissions for selling the property, and any amount previously paid for its loss or nondelivery, shall be deposited by the corporation making such sale, with a report thereof, and proof that the property was live stock or perishable freight, with the comptroller for the benefit of the general fund of the state, and shall be held by him in trust for reclamation by the person or persons entitled to receive the same. [*Thus am. by L.* 1892, *ch.* 676; *L.* 1896, *ch.* 974, *taking effect May* 28, 1896.]

§ 51. **Use of stoves or furnaces prohibited.**— It shall not be lawful for any railroad corporation, operating a steam railroad in this state, of the length of fifty miles or more, excepting foreign railroad corporations, incorporated without the jurisdiction of the United States, running cars upon tracks in this state for a distance of less than thirty miles, to heat its passenger cars, on other than mixed trains, excepting dining-room cars, by any stove or furnace kept inside the car, or suspended therefrom, unless in case of accident or other emergency, when it may temporarily use such stove or furnace with necessary fuel, in cars which have been equipped with apparatus to heat by steam, hot water or hot air from the locomotive, or from a special car, the present stove may be retained to be used only when the car is standing still, and no stove or furnace shall be used in a dining-room car, except for cooking purposes, and of pattern and kind to be approved by the railroad commissioners. This section shall not be held to affect or interfere with the use by the commissioners of fisheries of this or other states, or of the United States, of stoves for heating or cooking or boilers for hatching operations in their fish car or cars. Any person or corporation, violating any of the provisions of this section, shall be liable to a penalty of one thousand dollars, and to the further penalty of one hundred dollars for each and every day during which such violation shall continue. [*Thus am. by L.* 1896, *ch.* 299, *taking effect April* 17, 1896.]

§ 76. **Foreclosure of mortgages made by (consolidated) railroads partly in the state.**— Whenever a railroad corporation of

this or any other state or states whose line of road lies partly in this state and partly in another state or states, shall have executed a mortgage upon its entire line of railroad, and a sale of the entire line of road under such mortgage shall have been or may hereafter be ordered, adjudged and decreed by a court of competent jurisdiction of the state or states, or by a court of the United States sitting within the state or states in which the greater part of such line of railroad may be situated, upon the confirmation of such judgment or decree, and of the sale made thereunder, by the supreme court of this state or by the circuit court of the United States in the judicial district in which some part of such line of road is situated, such sale shall operate to pass title to the purchaser, of that part of the line of railroad lying in this state, together with its appurtenances and franchises, with the same force and effect as if the judgment or decree under which such sale is had, had been made by a court of competent jurisdiction of this state. Such judgment or decree and sale may be so ordered, adjudged, decreed or confirmed in any action or proceeding heretofore or hereafter brought in the supreme court, or in a court of the United States sitting in this state, for the foreclosure of such mortgage, or in aid of an action for that purpose in such other state or states, if it shall appear that such confirmation is for the interest of the public and of the parties, due and lawful provision being made for and in respect of any liens upon that part of the line of road or other property sold situate in this state, and for such costs, expenses, and charges which may appear to be just and lawful. If a receiver of the entire line of such railroad shall have been, or may hereafter be appointed by such court of competent jurisdiction of the state in which the greater part of the line of railroad is situated, or by a court of the United States sitting in such other state, such receiver may perform, within this state, the duties of his office not inconsistent with the laws of this state, and may sue and be sued in the courts of this state. [*Thus am. by L.* 1896, *ch.* 356, *taking effect April* 21, 1896.]

§ 77. **Powers of corporations organized to acquire and operate railroads partly in the state.**—A railroad corporation created under the laws of the state or states in which the greater part of the line of its railroad may be situated, or a railroad corporation

R. S., 9th ed., pp. 1292, 1298.

created under the railroad law, or under article one of the stock corporation law in this state, for the purpose of taking title to, and operating, the line of road as so sold, under a judgment or decree of a court of this state, or of a court of the United States sitting in this state, for the foreclosure of a mortgage, with its franchises and appurtenances, may hold, possess and operate not only those parts of the railroad lying in other states, but also that part of the line of such railroad lying in this state, and shall be subject to the duties and liabilities to which such corporation was, by the laws of this state, subject, and to such further or other duties and liabilities as are now or may hereafter be imposed by law upon railroad corporations of this state, and the provisions of the stock corporation law concerning reorganization of corporations shall apply to, and in respect of, every such successor railroad corporation. An exemplified copy of the certificate or certificates of incorporation, under and by virtue of which any such corporation is created in any other state, and a certified copy of the judgment or decree of any court sitting in any other state, under which said railroad shall have been sold, and a certified copy of the order or judgment or decree of confirmation and approval required by the preceding section, or of the order, judgment or decree of the court of this state, or of the United States in this state, which decreed the sale, confirming the same, shall be filed in the office of the secretary of state for this state, and in the office of the county clerk of the county where its principal business office in this state is or shall be located. [*Thus am. by L.* 1895, *ch.* 454; *L.* 1896, *ch.* 356, *taking effect April* 21, 1896.]

[L. 1896, ch. 356: "§ 8. This act shall take effect immediately, and shall apply in respect of decrees, foreclosures, sales, confirmations, reorganizations and incorporations, whether heretofore or hereafter made, provided, however, that nothing in this act shall affect any action or proceeding pending in any court, on or before the first day of April, eighteen hundred and ninety-six, to establish the invalidity of any foreclosure or reorganization theretofore had, or to enforce any judgment or claim arising before such foreclosure or reorganization."]

§ 91. **Consent of property owners and local authorities.**— A street surface railroad, or extensions or branches thereof, shall not be built, extended or operated unless the consent in writing acknowledged or proved as are deeds entitled to be recorded, of

the owners, in cities and villages, of one-half in value, and in towns, not within the corporate limits of a city or village, of the owners of two-thirds in value, of the property bounded on, and also the consent of the local authorities having control of that portion of a street or highway upon which it is proposed to build or operate such railroad shall have been first obtained. The consents of property owners in one city, village or town, or in any other civil division of the state, shall not be of any effect in any other city, village or town, or other civil division of the state. Consents of property owners heretofore obtained to the building, extending, operating or change of motive power shall be effectual for the purposes therein mentioned and may be deemed to be sufficiently proved and shall be entitled to be recorded, whenever such consents shall have been signed, executed or acknowledged before an officer authorized by law to take acknowledgments of deeds, or before or in the presence of a subscribing witness, and without regard to whether or not the subscribing witness shall have affixed his signature in the presence of the subscriber, provided that the proof of such signing, execution or acknowledgment shall have been made by such subscribing witness in the manner prescribed by chapter three, part two of the revised statutes. In cities the common council, acting subject to the power now possessed by the mayor to veto ordinances; in villages the board of trustees, and in towns the commissioner or commissioners of highways shall be the local authorities referred to; if in any city or county the exclusive control of any street, avenue or other property, which is to be used or occupied by any such railroad, is vested in any other authority, the consent of such authority shall also be first obtained. The value of the property above specified shall be ascertained and determined by the assessment roll of the city, village or town in which it is situated, completed last before the local authorities shall have given their consent, except property owned by such city, village or town, or by the state of New York, or the United States of America, the value of which shall be ascertained and determined by making the value thereof to be the same as is shown by such assessment roll to be the value of the equivalent in size and frontage of the adjacent property on the same street or highway; and the consent of the local authorities shall operate as the consent of such city, village or town as the owners of such property. [*Thus am.*

R. S., 9th ed., pp. 1882, 1889.

by L. 1892, *ch.* 676; *L.* 1893, *ch.* 434; *L.* 1894, *ch.* 723; *L.* 1895, *ch.* 545; *L.* 1896, *ch.* 855, *taking effect May* 22, 1896.]

[In connection with § 91 above, see L. 1896, ch. 649, validating and confirming consents given since Dec. 1, 1895, and prior to Feb. 1, 1896, by the local authorities of any city of the first or second class.]

§ 153. The board may also appoint, to serve during its pleasure, the following officers or any of them: An accountant, who shall be thoroughly skilled in railroad accounting, and who shall, under the direction of the board, make examinations of the books and accounts of railroad and other corporations, and supervise the quarterly and annual reports made by the railroad corporations to the board, and collect and compile railroad statistics, and perform such other duties as the board may prescribe. An inspector, who shall be a civil engineer, skilled in railroad affairs; also, an inspector, who shall be an expert in electrical railroad affairs, each of whom shall make such inspections of railroads and other matters relating thereto, as directed by the board, and report to it. Such additional clerical force as may be necessary for the transaction of its business. The board may also employ engineers, accountants and other experts whose services they may deem to be of temporary importance in conducting any investigation authorized by law. [*Thus am. by L.* 1892, *ch.* 534; *L.* 1896, *ch.* 456, *taking effect May* 9, 1896.]

§ 170. The total annual expense of the board authorized by law, excepting only rent of offices and the cost of printing and binding the annual reports of the board as provided by law, shall not exceed sixty thousand dollars; and shall be borne by the several corporations owning or operating railroads according to their means, to be apportioned by the comptroller, who, on or before July first, in each year, shall assess upon each of such corporations its proportion of such expenses, one-half in proportion to its net income for the fiscal year next preceding that in which the assessment is made, and one-half in proportion to the length of its main road and branches, except that each corporation whose line of road lies partly within and partly without the state, shall in respect of its net income be assessed on a part bearing the same proportion to its whole net income that the line of its road within the state bears to the whole length of road, and in respect of its main road and branches shall be

R. S., 9th ed., p. 1841.

assessed only on that part which lies within the state. Such assessment shall be collected in the manner provided by law for the collection of taxes upon corporations. [*Thus am. by L.* 1892, *ch.* 534; *L.* 1896, *ch.* 456, *taking effect May* 9, 1896.]

R. S., 9th ed., pp. 1341, 1359, 1370, 1373, 1376. §§ 10, 81, 128, 134, 139 of the Transportation Corporations Law are amended to read as follows:

§ 10. Formation of corporation.— Seven or more persons may become a corporation, for the purpose of building for their own use, equipping, furnishing, fitting, purchasing, chartering, navigating or owning steam, sail or other boats, ships, vessels or other property to be used in any lawful business, trade, commerce or navigation upon the ocean, or any seas, sounds, lakes, rivers, canals or other waterways, and for the carriage, transportation or storing of lading, freight, mails, property or passengers thereon by making, signing, acknowledging and filing a certificate, stating the name of the corporation, the specific objects for which it is formed, the waters to be navigated, and in case of ocean steamers, the ports between which such vessels are intended to be navigated, the amount of its capital stock, which shall not be less than five thousand dollars, nor more than four million dollars, the term of its existence, not to exceed fifty years, the number of shares of which the capital stock shall consist, the number of directors thereof, not less than five nor more than thirteen, the names of the directors for the first year, and the name of the city, village or town and county in which its principal office is to be situated, the number of shares of stock which each subscriber of the certificate agrees to take, which must in the aggregate equal ten per centum of the capital and at least ten per centum of which must be paid in cash. Such certificate shall have attached thereto, as a part thereof, the affidavit of at least three of such directors, to the effect that ten per centum of such capital stock has been in good faith subscribed, and at least ten per centum of such subscription has been paid in cash. No railroad corporation shall have, own or hold any stock in any such corporation, and no corporation organized under this act, and designed to navigate any of the canals of the state, shall have a capital stock exceeding fifty thousand dollars. [*Thus am. by L.* 1896, *ch.* 935, *taking effect May* 27, 1896.]

R. S., 9th ed., pp. 1859-61.

§ 81. **Must supply water; contracts with municipalities.**—Every such corporation shall supply the authorities or any of the inhabitants of any city, town or village through which the conduits or mains of such corporation may pass, or wherein such corporations may have organized, with pure and wholesome water at reasonable rates and cost, and the board of trustees of any incorporated village and the water commissioners or other board or officials performing the duties of water commissioners, and having charge of the water supplies of any city of this state, shall have the power to contract in the name and behalf of the municipal corporation of which they are officers, for the term of one year or more for the delivery by such company to the village or city, of water through hydrants or otherwise, for the extinguishment of fires and for sanitary and other public purposes; and the amount of such contract agreed to be paid shall be annually raised as a part of the expenses of such village or city, and shall be levied, assessed and collected in the same manner as other expenses of the village or city are raised, and when collected shall be kept separate from other funds of the village or city, and be paid over to such corporation by such trustees or city officials, according to the terms and conditions of any such contract; and any such contract entered into by the board of trustees of any village, or by water commissioners or other board performing the duties of water commissioners and having charge of the water supply of any city, shall be valid and binding upon such village or city, but no such contract shall be made for a longer period than ten years nor for a sum exceeding in the aggregate, two and one-half mills for every dollar of the taxable property of such village or city, per annum, except upon a petition of a majority of the taxable inhabitants of any such village or city, or portion thereof, which it is proposed to supply with pure and wholesome water, unless a resolution authorizing the same has been submitted to a vote of the electors of the village or city, in the manner provided by the village law or city charter, and approved by a majority of the voters entitled to vote and voting on such question at any annual election or special election duly called; and any board of trustees or board of water commissioners or other city officials, when so authorized, may make such contract for a term

not exceeding thirty years, and the amount of such contract shall be paid in semi-annual installments. The town board of any town may establish a water supply district in such town outside of a city or incorporated village therein, by filing a certificate describing the bounds thereof, in the office of the town clerk; and may contract in the name of the town for the delivery, by a corporation, subject to the provisions of this article, of a supply of water for fire, sanitary or other public purposes, to such districts, and the whole town shall be bound by such contract, but the rental or expense thereof shall annually, in the same manner as other expenses of the town are raised, be assessed, levied upon and collected only from the taxable property within such water supply district. Such money, when collected, shall be kept as a separate fund and be paid over to such corporation by the supervisor of the town, according to the terms and conditions of any such contract. No such contract shall be made for a longer period than five years, nor for an annual expense exceeding three mills upon each dollar of the taxable property within such water supply district. [*Thus am. by L.* 1892, *ch.* 617; *L.* 1893, *ch.* 549; *L.* 1894, *ch.* 230; *L.* 1896, *ch.* 678, *taking effect May* 15, 1896.]

§ 128. **Construction of bridges; obstruction of rafts prohibited.** — Every bridge constructed by any such corporation shall be built with a good and substantial railing or sliding at least four and one-half feet high, and over any stream navigable by rafts the corporation shall keep the channel of the stream above and below the bridge free and clear from all deposits, formed or occasioned by the erection of the bridge, which shall in any wise obstruct the navigation thereof, and shall be liable to all persons unreasonably or unnecessarily delayed or hindered in passing the same for all damages sustained thereby. Nothing in this act shall be construed to authorize the bridging of any river or water-course where the tide ebbs and flows, or any waters over which the federal authorities have any control, unless the consent of such federal authorities be first obtained; nor the construction of any bridge within the limits prescribed by any existing law for the erection or maintenance of any other bridge. [*Thus am. by L.* 1895, *ch.* 722; *L.* 1896, *ch.* 778, *taking effect May* 20, 1896.]

R. S., 9th ed., p. 1878.

§ 134. **Inspectors; their powers and duties.**—The commissioners of highways of the several towns and the trustees or other officers in the incorporated cities and villages of the state, who perform the duties of commissioners of highways in such cities and villages, shall be inspectors of plank-roads and turnpikes, in their respective towns, cities and villages. They shall inspect or cause to be inspected by one or more of them the whole of such turnpike or plank-roads as lies in their respective towns, villages or cities, at least once in each month, and whenever written complaint shall be made to any inspector, that any part of such road lying in the town, city or village of such inspector is out of repair he shall, without delay, view and examine the part complained of. If such turnpike or plank-road shall be found to be out of repair or in condition not to be conveniently used by the public, such inspectors or either of them, or the one to whom such complaint shall have been made, shall give written notice to the toll-gatherer, or person attending the gate nearest the place out of repair or in bad condition to cause the same to be put in good condition before a time therein designated not less than forty-eight hours after the service of such notice, or to appear before the county court of the county in which that part of the road is situated, at a time in said notice designated, and show cause why such turnpike or plank-road should not be repaired or put in good condition as in said notice directed. If such road shall not have been theretofore repaired or put in good condition as in said notice directed then the county court shall, upon the return of such notice hear the allegations and proofs of the parties, and it shall always be open for that purpose; and if the court shall find such road to be out of repair or in bad condition it may give additional time for the repair thereof, or it may order the gate nearest the place out of repair or in bad condition to be immediately upon the service of the order, or at a time therein specified, thrown open and to remain open until the road shall be fully repaired at the place directed to be repaired as aforesaid. Such order shall be served in the manner therein specified upon the keeper of the gate so ordered to be thrown open. Any inspector within the town, city or village where such road has been repaired pursuant to notice or order as aforesaid, may certify that such road has been duly repaired. The fees of the inspector for the services above mentioned shall be two dollars for each day

actually employed, together with necessary witnesses fees, to be paid by the corporation or person whose road is so inspected, if the gates are ordered to be thrown open, but otherwise to be charged, audited and paid in the same manner as other fees of commissioners of highways. Any inspector who neglects to perform his duties shall forfeit to the party aggrieved the sum of twenty-five dollars for each offense. Every keeper of a gate ordered to be thrown open, not immediately obeying such order or not keeping such gate open until such road shall be fully repaired or until a certificate that such road has been duly repaired is granted, or hindering or delaying any person in passing, or taking any tolls from any person passing such gate during the time it ought to be open, shall forfeit to the party aggrieved the sum of ten dollars for each offense, and the corporation or person owning the road, who shall refuse or neglect to obey the requirements of any such order shall forfeit to the people of the state the sum of two hundred dollars for each offense. [*Thus am. by L.* 1896, *ch.* 343, *taking effect April* 21, 1896.]

§ 139. **Surrender of road.**— The directors of any plankroad or turnpike corporation may abandon the whole or any part of its road at either or both ends thereof, upon obtaining the written consent of the stockholders, owning two-thirds of the stock of the corporation, which surrender shall be by a declaration in writing to that effect, attested by the seal of the corporation and acknowledged by the president and secretary. Such declaration and consent shall be filed and recorded in the clerk's office of the county in which any part of the road abandoned shall be situated, and the road so abandoned shall cease to be the road or the property of the corporation, and shall revert and belong to the several towns, cities and villages through which it was constructed, and the corporation shall no longer be liable to maintain it or to be assessed thereon, or permitted to collect tolls for traveling over the same, but without impairing its right to take toll on the remaining part of its road at the rate prescribed by law. And whenever any turnpike or plankroad company, now existing or hereafter created, shall abandon all or any part of its road within this state, in the manner above provided, or whenever its charter or franchise of such company shall be annulled or revoked, the road of such turnpike or plankroad company shall revert to and belong to the several towns,

R. S., 9th ed., pp. 1384-5.

cities and villages through which such road shall pass. And it shall be the duty of the several towns, cities and villages acquiring any road under this act to immediately lay out and declare the same a free public highway. And it shall be the duty of the several towns, cities and villages, to maintain and work every road acquired under the provisions of this act in the same manner as the other roads of such towns, cities and villages are maintained and worked. And any town, city or village may borrow money in the manner provided by law for the purpose of improving or repairing the same. [*Thus am. by L.* 1896, *ch.* 964, *taking effect May* 28, 1896.]

R. S., 9th ed., pp. 1384-5. § 2 of the Business Corporations Law is amended to read as follows:

§ 2. **Incorporation.**— Three or more persons may become a stock corporation for any lawful business purpose or purposes other than a moneyed corporation, or a corporation provided for by the banking, the insurance, the railroad and the transportation corporation laws, by making, signing, acknowledging and filing a certificate which shall contain:

1. The name of the proposed corporation.
2. The purpose or purposes for which it is to be formed.
3. The amount of the capital stock, and if any portion be preferred stock, the preferences thereof.
4. The number of shares of which the capital stock shall consist, each of which shall not be less than five nor more than one hundred dollars, and the amount of capital not less than five hundred dollars, with which said corporation will begin business.
5. The city, village or town in which its principal business office is to be located.
6. Its duration.
7. The number of its directors, not less than three nor more than thirteen.
8. The names and post-office addresses of the directors for the first year.
9. The names and post-office addresses of the subscribers and a statement of the number of shares of stock which each agrees to take in the corporation.

The certificate may contain any other provision for the regulation of the business and the conduct of the affairs of the corporation and any limitation upon its powers and upon the powers

R. S., 9th ed., p. 1894.

of its directors and stockholders which does not exempt them from any obligation or from the performance of any duty imposed by law. [*Thus am. by L.* 1895, *ch.* 671; *L.* 1896, *ch.* 369, § 1, *and ch.* 460, *taking effect May* 9, 1896.]

[L. 1896, ch. 369, §§ 2 and 3, taking effect April 22, 1896, read as follows:

§ 2. Any certificate of incorporation heretofore filed under said business corporations law, which shall contain the names and post-office addresses, either of the subscribers to the stock or of the subscribers of the certificate, and a statement of the number of shares of stock which each agrees to take in the corporation, shall be deemed to have complied with the requirements of said subdivision as heretofore existing.

§ 3. This act shall not prejudice any pending action or proceeding or any rights previously accrued.]

R. S., 9th ed., pp. 1394-1430. Index, §§ 3, 5, 6, 10-12, 15-16, 19, title of art. IV, §§ 61, 62, 66, entire art. V, numbers of art. V, VI, VII, §§ 80, 85 of the Religious Corporations Law are amended to read as follows:

CHAPTER XLII OF THE GENERAL LAWS.

The Religious Corporations Law.

Article I. Provisions applicable to religious corporations generally. (§§ 1-19.)

II. Special provisions for the incorporation and government of Protestant Episcopal parishes or churches. (§§ 30-36.)

III. Special provisions for the incorporation and government of Roman Catholic and Greek churches. (§§ 50-51.)

IV. Special provisions for the incorporation and government of Reformed Dutch, Presbyterian, Reformed Presbyterian and Evangelical Lutheran churches. (§§ 60-66.)

V. Special provisions for the incorporation and government of Baptist churches. (§§ 67-77.)

VI. Special provisions for the incorporation and government of churches of other denominations. (§§ 80-93.)

VII. Special provisions for the incorporation and government of two or more unincorporated churches as a union church. (§§ 100-101.)

VIII. Laws repealed; when to take effect. (§§ 110-111.)

[*Thus am. by L.* 1896, *ch.* 336, *taking effect April* 21, 1896.]

R. S., 9th ed., pp. 1895-6.

§ 3. **Filing and recording certificates of incorporation of religious corporations.**— The certificate of incorporation of a religious corporation shall be acknowledged or proved before an officer authorized to take the acknowledgment or proof of deeds or conveyances of real estate, to be recorded in the county in which the principal office or place of worship of said corporation is or is intended to be situated, and shall be filed and recorded in the office of the clerk of said county. If there is not, or is not intended to be, any such office or place of worship, the certificate shall be filed and recorded in the office of the secretary of state. [*Thus am. by L.* 1896, *ch.* 336, *taking effect April* 21, 1896.]

§ 5. **General powers and duties of trustees of religious corporations.**— The trustees of every religious corporation shall have the custody and control of all the temporalities and property, real or personal, belonging to the corporation and of the revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the religious denomination or ecclesiastical governing body, if any, with which the corporation is connected, and with the provisions of law relating thereto, for the support and maintenance of the corporation, or provided the members of the corporation at a meeting thereof shall so authorize, of some religious, charitable, benevolent, or educational object conducted by said corporation or in connection with it, or with such denomination, and they shall not use such property, or revenues for any other purpose or divert the same from such uses. By-laws duly adopted at a meeting of the members of the corporation shall control the action of its trustees.

But this section does not give to the trustees of an incorporated church, any control over the calling, settlement, dismissal or removal of its minister, or the fixing of his salary; or any power to fix or change the times, nature or order of the public or social worship of such church, except when they are also the spiritual officers of such church. [*Thus am. by L.* 1896, *ch.* 336, *taking effect April* 21, 1896.]

§ 6. **Acquisition of property by religious corporations for branch institutions; establishment, maintenance and management thereof.**— Any religious corporation may acquire property for associate houses, church buildings, chapels, mission-houses, school-houses for Sunday or parochial schools, or dispensaries of medicine for the poor, or property for the residence of its min-

isters, teachers or employes, or property for a home for the aged. The persons attending public worship in any such associate house, mission-house, church building, or chapel connected therewith shall not, by reason thereof have any rights as members of the parent corporation. The persons statedly worshipping in any such house, mission-house, church building or chapel may, with the consent of the trustees of such corporation, become separately incorporated as a church, and the parent corporation may, in pursuance of the provisions of law regulating the disposition of real property by religious corporations, rent or convey to the new corporation, with or without consideration, any such associate house, church building, chapel, mission-house, school-house or dispensary and the lot connected therewith, subject to such regulations as the trustees of the parent corporation may make. Any religious corporation shall have power to establish, maintain and manage by its trustees or other officers as a part of its religious purpose a home for the aged, and may take and hold by conveyance, donation, bequest or devise real and personal property for such purpose, and may purchase and may erect suitable buildings therefor. Any such corporation may take and hold in grant, donation, bequest or devise of real or personal property heretofore or hereafter made upon trust, apply the same, or the income thereof, under the direction of its trustees or other officers, for the purpose of establishing, maintaining and managing such a home and for the erection, preservation, repair or extension of any building or buildings for such purpose. [*Thus am. by L.* 1896, *ch.* 525, *taking effect May* 11, 1896.]

§ 10. **Correction and confirmation of conveyances to religious corporations.**— If, in a conveyance of real property, or in any instrument intended to operate as such, heretofore or hereafter made to a religious corporation, its corporate name is not stated or is not correctly stated, but such conveyance or instrument indicates the intention of the grantor therein to convey such property to such corporation, and such corporation has entered into possession and occupation of such property, any officer of the corporation authorized so to do by its trustees may record in the office where such conveyance or instrument is recorded a statement, signed and acknowledged by him or proved, setting forth the date of such conveyance or instrument, the date of record

and the number and page of the book of record thereof, the name of the grantor, a description of the property conveyed or intended to be conveyed, the name of the grantee as expressed in such conveyance or instrument, the correct name of such corporation, the fact of authorization by the trustees of the corporation, to make and record such statement, and that the grantor in such conveyance or instrument intended thereby to convey such property to such corporation as the said officer verily believes, with the reason for such belief. Such statement so signed and acknowledged or proved shall be recorded with the records of deeds in such office, and indexed as a deed from the grantee as named in such instrument or in such conveyance to such corporation. The register or clerk, as the case may be, shall note the recording of such statement on the margin of the record of such conveyance, and for his services shall be entitled to receive the fees allowed for recording deeds. Such statement so recorded shall be presumptive evidence that such matters therein stated are true, and that such corporation was the grantee in the original instrument or conveyance. All conveyances heretofore made, or by any instrument intended to be made, to a religious corporation of real property appropriated to the use of such corporation, or entitled to be so appropriated, are hereby confirmed and declared valid and effectual, notwithstanding any defect in the form of the conveyance or the description of the grantee therein, but this section shall not affect any suit or proceeding pending on the thirty-first day of January, eighteen hundred and seventy-one. [*Thus am. by L.* 1896, *ch.* 336, *taking effect April* 21, 1896.]

§ 11. **Sale, mortgage and lease of real property of religious corporations.**—A religious corporation shall not sell or mortgage any of its real property without applying for and obtaining leave of the court therefor pursuant to the provisions of the code of civil procedure. The trustees of an incorporated Protestant Episcopal church shall not vote upon any resolution or proposition for the sale, mortgage or lease of its real property, unless the rector of such church, if it then has a rector, shall be present. The trustees of an incorporated Roman Catholic church shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent of the archbishop or bishop of the diocese to which such church belongs, or in case

of their absence or inability to act, without the consent of the vicar-general or administrator of such diocese. The petition of the trustees of an incorporated Protestant Episcopal church or Roman Catholic church shall, in addition to the matters required by the code of civil procedure to be set forth therein, set forth that this section has also been complied with. But lots, plats or burial permits in a cemetery owned by a religious corporation may be sold without applying for or obtaining leave of the court. No cemetery lands of a religious corporation shall be mortgaged while used for cemetery purposes. [*Thus am. by L.* 1896, *ch.* 336, *taking effect April* 21, 1896.]

§ 12. **Consolidation of incorporated churches.**— Two or more incorporated churches may enter into an agreement, under their respective corporate seals, for the consolidation of such corporations, setting forth the name of the proposed new corporation, the denomination, if any, to which it is to belong, and if the churches of such denomination have more than one method of choosing trustees, by which of such methods the trustees are to be chosen, the number of such trustees, the names of the persons to be the first trustees of the new corporation, and the date of its first annual corporate meeting. Such agreement shall not be valid unless approved by the governing body of the denomination, if any, to which each church belongs, having jurisdiction over such church. Each corporation shall thereupon make a separate petition to the supreme court for an order consolidating the corporation, setting forth the denomination, if any, to which the church belongs, that the consent of the governing body to the consolidation, if any, of that denomination having jurisdiction over such church has been obtained, the agreement therefor, and a statement of all the property and liabilities and the amount and sources of the annual income of such petitioning corporation. In its discretion the court may direct that notice of the hearing of such petition be given to the parties interested therein in such manner and for such time as it may prescribe. After hearing all the parties interested, present and desiring to be heard, the court may make an order for the consolidation of the corporations on the terms of such agreement and such other terms and conditions as it may prescribe, specifying the name of such new corporation and the first trustees thereof, and the

method by which their successors shall be chosen and the date of its first annual corporate meeting. When such order is made and duly entered, the persons constituting such corporations shall become an incorporated church by, and said petitioning churches shall become consolidated under, the name designated in the order, and the trustees therein named shall be the first trustees thereof, and the future trustees thereof shall be chosen by the method therein designated, and all the estate, rights, powers and property of whatsoever nature belonging to either corporation shall, without further act or deed be vested in and transferred to the new corporation as effectually as they were vested in or belonged to the former corporations; and the said new corporation shall be liable for all the debts and liabilities of the former corporations in the same manner and as effectually as if said debts or liabilities had been contracted or incurred by the new corporation. A certified copy of such order shall be recorded in the book for recording certificates of incorporation in each county clerk's office in which the certificate of incorporation of each consolidating church was recorded; or if no such certificate was so recorded, then in the clerk's office of the county in which the principal place of worship or principal office of the new corporation is, or is intended to be, situated. [*Thus am. by L.* 1896, *ch.* 56, *taking effect February* 29, 1896.]

§ 15. **Property of extinct churches.**— Such incorporated governing body may decide that a church, parish or society in connection with it or over which it has ecclesiastical jurisdiction, has become extinct, if it has failed for two consecutive years next prior thereto to maintain religious services according to the discipline, customs and usages of such governing body, or has had less than thirteen resident attending members paying annual pew rent or making annual contribution towards its support, and may take possession of the temporalities and property belonging to such church, parish or religious society, and manage; or may, in pursuance of the provisions of law relating to the disposition of real property by religious corporations, sell or dispose of the same and apply the proceeds thereof to any of the purposes to which the property of such governing religious body is devoted, and it shall not divert such property to any other object. The Congregational Church Building society shall be deemed the governing

religious body of every extinct or disbanded Congregational church within the meaning of this section. The Baptist missionary convention of the state of New York shall be deemed the governing religious body for every extinct or disbanded Baptist church, and Baptist churches becoming extinct or about to disband or disorganize may, by a vote of two-thirds of their members present and voting therefor at a meeting regularly called for the purpose, vest all their temporalities in, and place them in possession of the Baptist missionary convention of the state of New York. The New York Eastern Christian Benevolent and Missionary society shall be deemed the governing religious body of any extinct or disbanded church of the Christian denomination situated within the bounds of the New York Eastern Christian conference; and the New York Christian association, of any other church of the Christian denomination, and any other incorporated conference shall be deemed the governing religious body of any such church situated within its bounds. By Christian denomination is meant only the denomination especially termed "Christian," in which the Bible is declared to be the only rule of faith, Christian their only name, and Christian character their only test of fellowship, and in which no form of baptism is made a test of Christian character. [*Thus am. by L.* 1896, *chs.* 336 *and* 337, *taking effect April* 21, 1896.]

[As to the vesting of the property of extinct Free Baptist churches, see L. 1896, ch. 308, ante, p. 3645.]

§ 16. **Corporations for organizing and maintaining mission churches and Sunday schools.**— Ten or more members of two or more incorporated churches may become a corporation for the purpose of organizing and maintaining mission churches and Sunday schools, and of acquiring property therefor, by executing, a certificate stating the name of such corporation, the city in which its principal office or church or school is or is intended to be located; the number of trustees to manage its affairs, which shall be three, six or nine, and the names of the trustees for the first year of its existence, which certificate shall be acknowledged or proved and filed as hereinbefore provided. Whenever a mission church established by such corporation becomes self-sustaining, such mission church may become incorporated and shall be governed under the provisions of this act for the incorporation

R. S., 9th ed., p. 1406.

and government of a church of the religious denomination to which such mission church belongs, and thereon such parent corporation may convey to such incorporated church the property connected therewith. [*Thus am. by L.* 1896, *ch.* 336, *taking effect April* 21, 1896.]

§ 19. **Application of this chapter to churches incorporated prior to January first, eighteen hundred and twenty-eight.**— Any provision of this chapter shall not be deemed to apply to any church incorporated under any general or special law, prior to January first, eighteen hundred and twenty-eight, if such provision is inconsistent with or in derogation of any of the rights and privileges of such corporation as they existed under the law by or pursuant to which such corporation was formed, unless such corporation subsequent to such date, shall have lawfully reincorporated under a law enacted since the first day of January, eighteen hundred and twenty-eight, or unless the trustees of such corporation shall, by resolution, determine that the provisions of this chapter applying to churches of the same denomination and to the trustees thereof shall apply to such church, and unless such resolution shall be submitted to the next ensuing annual meeting of such church, and ratified by a majority of the votes of the qualified voters present and voting thereon. Notice of the adoption of such resolution and of the proposed submission thereof for ratification, shall be given with the notice of such annual meeting, and in addition thereto, mailed to each member of such church corporation at his last known post-office address, at least two weeks prior to such annual meeting, and published once a week for two successive weeks immediately preceding such meeting in a newspaper, if any, published in the city, village or town in which the principal place of worship of such corporation is located and otherwise in a newspaper published in an adjoining town. If such resolution is so ratified, the trustees of such church shall cause a certificate setting forth a copy of such resolution, its adoption by the board of trustees and its due ratification by the members of such corporation, to be filed in the office of the clerk of the county in which the principal place of worship of such corporation is located. Such county clerk shall cause such certificate to be recorded in the book in which certificates of incorporation of religious corporations are recorded

in pursuance of law. [*Added by L.* 1896, *ch.* 336, *taking effect April* 21, 1896.]

[The title of article IV is amended to read as follows:]

Special provisions for the incorporation and government of Reformed Dutch, Presbyterian, Reformed Presbyterian and Lutheran churches. [*Thus am. by L.* 1896, *ch.* 190, *taking effect April* 1, 1896.]

§ 61. **Decision by Lutheran and Presbyterian churches as to system of incorporation and government.**—A meeting for the purpose of incorporating an unincorporated Evangelical Lutheran church, or an unincorporated Presbyterian church in connection with the Presbyterian church in the United States of America, must be called and held in pursuance of the provisions of the next article of this chapter, except that the first business of such meeting after its organization, shall be to determine whether such church shall be incorporated and governed in pursuance of this article, or in pursuance of the next article of this chapter. If such meeting determines that such church shall be incorporated and governed in pursuance of this article, then no further proceeding shall be taken in pursuance of the next article, and such church may be incorporated and shall be governed after its incorporation in pursuance of the provisions of the following sections of this article, except such provisions as are applicable only to churches of a different denomination; and the certificate of incorporation shall recite such determination of such meeting. If such church is an unincorporated Presbyterian church in connection with the Presbyterian church in the United States of America, and such meeting determine that it shall be incorporated and governed in pursuance of this article, then the meeting shall also determine whether by virtue of their office, the deacons only of such church, or the pastor, elders and deacons of such church, or the pastor and elders of such church, shall be the trustees of such corporation; and the certificate of the incorporation shall recite such determination of such meeting. If such meeting determine that such church shall be incorporated and governed in pursuance of the next article of this chapter, then this article shall not be applicable thereto, but such church may be incorporated and shall be governed after its incorporation in pursuance of the provisions of the next article of this

R. S., 9th ed., p. 1417.

chapter, except such provisions as are applicable to churches of a single religious denomination only. [*Thus am. by L.* 1896, *chs.* 35, 190, *taking effect April* 1, 1896.]

§ 62. **Incorporation of Reformed Dutch, Presbyterian, Reformed Presbyterian and Evangelical Lutheran churches under this article.**—If an unincorporated church in connection with the Reformed church in America, the true Reformed Dutch church in the United States of America, the Reformed Presbyterian church, or with the Evangelical Lutheran church, determine to incorporate in pursuance of this article, the minister or ministers and the elders and deacons thereof, or if a Presbyterian church in connection with the Presbyterian church in the United States of America, the officers determined upon as the trustees thereof by the meeting for incorporation or such of them as may be in office, shall execute, acknowledge and cause to be filed and recorded, a certificate in pursuance of this article. The deacons of a Reformed Presbyterian church may alone sign such certificate if authorized so to do by such church. Such certificate of incorporation shall state the name of the proposed corporation, the county and town, city or village where its principal place of worship is or is intended to be located, and, if it be an Evangelical Lutheran church, or a Presbyterian church in connection with the Presbyterian church in the United States of America, the fact that a meeting of such church duly called decided that it be incorporated under this article. If it be signed by the deacons of a Reformed Presbyterian church, it shall state that they were authorized so to do by such church. If it be the certificate of a Presbyterian church in connection with the Presbyterian church in the United States of America, it shall recite that the officers signing such certificate were determined upon by the meeting for incorporation to be the trustees of such corporation. On filing such certificate such church shall be a corporation by the name stated therein, and the minister or ministers, if any, and the elders and deacons of such church shall, by virtue of their offices be the trustees of such corporation, except that if it be a Reformed Presbyterian church, the certificate of incorporation of which shall have been, in pursuance of law, signed by its deacons only, the deacons of such church shall, by virtue of their offices, be the trustees of such

corporation; and except that if it be a Presbyterian church in connection with the Presbyterian church in the United States of America, the officers determined upon by the meeting for incorporation shall, by virtue of their offices, be the trustees of such corporation. [*Thus am. by L.* 1896, *ch.* 190, *taking effect April* 1, 1896.]

§ 66. **Evangelical Lutheran and Presbyterian churches, changing system of electing trustees.**— If the trustees of an incorporated Evangelical Lutheran church, or an incorporated Presbyterian church in connection with the Presbyterian church in the United States of America, shall at any time be elective in pursuance of the next article of this chapter, the church may, at an annual corporate meeting, if notice thereof be given with the notice of such meeting, determine, if an Evangelical Lutheran church, that the minister or ministers and elders and deacons thereof, or if a Presbyterian church in connection with the Presbyterian church in the United States of America, that the deacons thereof, or the pastor and the elders and the deacons thereof, or the pastor and the elders thereof, shall thereafter constitute the trustees thereof, and thereon the trustees of such church shall sign, acknowledge and cause to be filed and recorded, a certificate stating the fact of such determination, and if an Evangelical Lutheran church, the names of the minister or minister,* if any, and of the elders and deacons of such church, or if a Presbyterian church in connection with the Presbyterian church in the United States of America, the names of the officers determined upon to be the ex-officio trustees thereof; and thereon the terms of office of such elective trustees shall cease, and, the minister or ministers, and the elders and deacons of such church, if an Evangelical Lutheran church, or the officers determined upon by such corporate meeting; if a Presbyterian church in connection with the Presbyterian church in the United States of America, and their successors in office shall, by virtue of their respective offices, be the trustees of such church. If, at any time, the officers of an incorporated Evangelical Lutheran church, or an incorporated Presbyterian church in connection with the Presbyterian church in the United States of America, which officers by virtue of their offices constitute the trustees thereof, shall determine to submit to a meeting of such church corpora-

*So in the original.

tion, the question whether the trustees of such church shall be thereafter elective in pursuance of the next article of this chapter, they shall cause a corporate meeting of such church to be called and held in the manner provided in sections eighty-four and eighty-five of this chapter, and such corporate meeting shall determine, whether the trustees of such church shall thereafter be elective in pursuance of the next article of this chapter, and also whether the number of such trustees shall be three, six or nine, and the date of the annual corporate meeting of the church. If such meeting shall determine that such trustees shall thereafter be elective, the presiding officer thereof and at least two other persons present and voting thereat, shall sign, acknowledge and cause to be filed and recorded in the office of the clerk of the county in which the certificate of incorporation of such church is filed, a certificate of such determination of such meeting; and thereafter the trustees of such church shall be elective in pursuance of the next article of this chapter. At the next annual corporate meeting after the filing of such certificate, one-third of the number of trustees so determined on shall be elected to hold office for one year, one-third for two years, and one-third for three years, and the officers of such church who by virtue of their offices have been trustees of such church, shall then cease to be such trustees, and thereafter article five of this chapter shall apply to such church. At each subsequent annual corporate meeting of such church, one-third of the number of trustees so determined on shall be elected to hold office for three years. [*Thus am. by L.* 1896, *ch.* 190, *taking effect April* 1, 1896.]

ARTICLE V.*

Special Provisions for the Incorporation and Government of Baptist Churches.

Section 67. Notice of meeting for incorporation.
68. The meeting for incorporation.
69. The certificate of incorporation.
70. Time, place and notice of corporate meetings.
71. Organization and conduct of corporate meetings; qualifications of voters thereat.
72. Changing date of annual corporate meetings.

* This article, §§ 67-77, inserted, and former articles V, VI and VII renumbered articles VI, VII and VIII by L. 1896, ch. 336, taking effect April 21, 1896.

R. S., 9th ed., p. 1419.

Section 73. Changing number of trustees.
74. Meetings of trustees.
75. The creation and filling of vacancies among trustees of such churches.
76. Control of trustees by corporate meetings of such churches; salaries of ministers.
77. Transfer of property to the Baptist Missionary Convention of the State of New York.

Section 67.* **Notice of meeting for incorporation.**—Notice of a meeting for the purpose of incorporating an unincorporated Baptist church shall be given as follows: The notice shall be in writing, and shall state, in substance, that a meeting of such unincorporated church will be held at its usual place of worship at a specified day and hour, for the purpose of incorporating such church, electing trustees thereof, and selecting a corporate name therefor. The notice must be signed by at least six persons of full age, who are then members in good and regular standing of such church by admission into full communion or membership therewith. A copy of such notice shall be publicly read at a regular meeting of such unincorporated church for public worship, on the two successive Sundays immediately preceding the meeting, by the minister of such church, or a deacon thereof or by any person qualified to sign such notice.

§ 68.* **The meeting for incorporation.**—At the meeting for incorporation, held in pursuance of such notice, the qualified voters, until otherwise decided as hereinafter provided, shall be all persons of full age, who are then members, in good and regular standing of such church, by admission into full communion or membership therewith. At such meeting the presence of a majority of such qualified voters, at least six in number, shall be necessary to constitute a quorum, and all matters or questions shall be decided by a majority of the qualified voters voting thereon. There shall be elected at said meeting from the qualified voters then present, a presiding officer, a clerk to keep the record of the proceedings of the meeting and two inspectors of election to receive the ballots cast. The presiding officer and the inspectors shall declare the result of the ballots cast

* This article, §§ 67–77, inserted, and former articles V, VI and VII renumbered articles VI, VII and VIII by L. 1896, ch. 336, taking effect April 21, 1896.

on any matter, and shall be the judges of the qualifications of voters. If the meeting shall decide that such unincorporated church shall become incorporated, the meeting shall also decide upon the name of the proposed corporation, the number of the trustees thereof, which shall be three, six or nine, and the date, not more than fifteen months thereafter, on which the first annual election of the trustees thereof shall be held, and shall decide also whether those who, from the time of the formation of such church or during the year preceding the meeting for incorporation, have statedly worshipped with such church and have regularly contributed to the financial support thereof, shall be qualified voters at such meeting for incorporation, and whether those who, during the year preceding the subsequent corporate meetings of the church shall have statedly worshipped with such church and shall have regularly contributed to the financial support thereof, shall be qualified voters at such corporate meetings. Such meeting shall thereupon elect by ballot from the persons qualified to vote thereat one-third of the number of trustees so decided on, who shall hold office until the first annual election of trustees thereafter, and one-third of such number of trustees who shall hold office until the second annual election of trustees thereafter, and one-third of such number of trustees who shall hold office until the third annual election of trustees thereafter, or until the respective successors of such trustees shall be elected.

§ 69.* **The certificate of incorporation.**— If the meeting shall decide that such unincorporated church shall become incorporated, the presiding officer of such meeting and the two inspectors of election shall execute a certificate setting forth the name of the proposed corporation, the number of the trustees thereof, the names of the persons elected as trustees and the terms of office for which they were respectively elected and the county and town, city or village in which its principal place of worship is or is intended to be located. On the filing and recording of such certificate after it shall have been acknowledged or proved as hereinbefore provided, the persons qualified to vote at such meeting and those persons who shall thereafter, from time to time, be qualified voters at the corporate meetings thereof, shall be a corporation by the name stated in such cer-

* This article, §§ 67-77, inserted, and former articles V, VI and VII renumbered articles VI, VII and VIII by L. 1896, ch. 336, taking effect April 21, 1896

tificate, and the persons therein stated to be elected trustees of such church shall be the trustees thereof, for the terms for which they were respectively elected and until their respective successors shall be elected.

§ 70.* Time, place and notice of corporate meetings.—The annual corporate meeting of every incorporated Baptist church shall be held at the time and place fixed by or in pursuance of law therefor, if such time and place be so fixed, and otherwise, at a time and place to be fixed by its trustees. A special corporate meeting of any such church may be called by the board of trustees thereof, on its own motion, and shall be called on the written request of at least ten qualified voters of such church. The trustees shall cause notice of the time and place of its annual corporate meeting, and of the names of any trustees whose successors are to be elected thereat; and, if a special meeting, of the business to be transacted thereat, to be publicly read by the minister of such church or any trustee thereof at a regular meeting of the church for public worship, on the two successive Sundays immediately preceding such meeting.

§ 71.* Organization and conduct of corporate meetings; qualifications of voters thereat.—At a corporate meeting of an incorporated Baptist church the qualified voters shall be all persons of full age, who are then members of such church in good and regular standing by admission into full communion or membership therewith, or who have statedly worshipped with such church and have regularly contributed to the financial support thereof during the year next preceding such meeting; but any incorporated Baptist church may at any annual corporate meeting thereof, if notice of the intention so to do has been given with the notice of such meeting, decide that thereafter only members of such church of full age and in good and regular standing by admission into full communion or membership therewith shall be qualified voters at the corporate meetings. At such corporate meetings the presence of at least six persons qualified to vote thereat shall be necessary to constitute a quorum, and all matters or questions shall be decided by a majority of the qualified voters voting thereon. There shall be elected at said meeting from the qualified voters then present, a presiding officer, a clerk

* This article, §§ 67–77, inserted, and former articles V, VI and VII renumbered articles VI, VII and VIII by L. 1896, ch. 336, taking effect April 21, 1896.

to keep the records of the proceedings of the meeting and two inspectors of election to receive the ballots cast. The presiding officer and the inspectors of election shall declare the result of the ballots cast on any matter and shall be the judge of the qualifications of voters. At each annual corporate meeting, successors to those trustees whose terms of office then expire, shall be elected by ballot from the qualified voters, for a term of three years thereafter, and until their successors shall be elected.

§ 72.* **Changing date of annual corporate meetings.**—An annual corporate meeting of an incorporated Baptist church may change the date of its annual meeting thereafter. If the date fixed for the annual meeting shall be less than six months after the annual meeting at which such change is made, the next annual meeting shall be held one year from the date so fixed. For the purpose of determining the terms of office of trustees, the time between the annual meeting at which such change is made and the next annual meeting thereafter shall be reckoned as one year.

§ 73.* **Changing number of trustees.**— An incorporated Baptist church may, at an annual corporate meeting, change the number of its trustees to three, six or nine, or classify them so that the terms of one-third expire each year, provided that notice of such intended change or classification be included in the notice of such annual corporate meeting. No such change shall affect the terms of the trustees then in office, and if the change reduces the number of trustees, elections shall not be held to fill vacancies caused by the expiration of the terms of trustees until the number of trustees equals the number to which the trustees were reduced. Whenever the number of trustees in office is less than the number so determined on, sufficient additional trustees shall be elected to make the number of trustees equal to the number so determined on. The trustees so elected up to and including one-third of the number so determined on, shall be elected for three years, the remainder up to and including one-third of the number so determined on for two years, and the remainder for one year.

§ 74.* **Meetings of trustees.**— Meetings of the trustees of an incorporated Baptist church shall be called by giving at least twenty-four hours' notice thereof personally or by mail to all the

* This article, §§ 67-77, inserted, and former articles V, VI and VII renumbered articles VI, VII and VIII by L. 1896, ch 336, taking effect April 21, 1896.

trustees and such notice may be given by two of the trustees, but by the unanimous consent of the trustees a meeting may be held without previous notice thereof. A majority of the whole number of trustees shall constitute a quorum for the transaction of business at any meeting lawfully convened.

§ 75.* **The creation and filling of vacancies among trustees of such churches.**— If any trustee of an incorporated Baptist church declines to act, resigns or dies, or having been a member of such church ceases to be such member, or not having been a member of such church, ceases to be a qualified voter at a corporate meeting thereof, his office shall be vacant, and such vacancy may be filled by the remaining trustees until the next annual corporate meeting of such church, at which meeting the vacancy shall be filled for the unexpired term.

§ 76.* **Control of trustees by corporate meetings of such churches; salaries of minister.**— The trustees of an incorporated Baptist church shall have no power to settle or remove a minister or to fix his salary or without the consent of a corporate meeting, to incur debts beyond what is necessary for the administration of the temporal affairs of the church and for the care of the property of the corporation; or to fix or change the time, nature or order of the public or social worship of such church.

§ 77.* **Transfer of property to Baptist corporations.**—Any incorporated Baptist church, created by or existing under the laws of the state of New York, having its principal office or place of worship in the state of New York, or whose last place of worship was within the state of New York, is hereby authorized and empowered, by a vote of two-thirds of its qualified voters present and voting therefor, at a meeting regularly called for that purpose, to transfer and convey any of its property, real or personal, which it now has or may hereafter acquire, to any religious, charitable or missionary corporation connected with the Baptist denomination and incorporated by or organized under any law or laws of the state of New York, either solely, or among other purposes, to establish or maintain, or to assist in establishing or maintaining churches, schools, or mission stations or to erect, or assist in the erection of such buildings as may be necessary for any of such purposes, and on or without the payment of any

* This article, §§ 67-77, inserted, and former articles V, VI and VII renumbered articles VI, VII and VIII by L. 1896, ch. 396, taking effect April 21, 1896.

R. S., 9th ed., pp. 1420, 1424.

money or other consideration therefor, and upon such transfer or conveyance being made, the title to and the ownership and right of possession of the property so transferred and conveyed shall be vested in and conveyed to such grantee; provided, however, that nothing herein contained shall impair or affect in any way, any existing claim upon or lien against any property so transferred or conveyed, or any action at law or legal proceeding, and subject in respect to the amount of property the said grantee may take and hold to the restrictions and limitations of existing laws.

§ 80. Application of this article.— This article is not applicable to a Baptist church, a Protestant Episcopal church, a Roman Catholic church, or to a Christian Orthodox Catholic church of the Eastern Confession. No provision of this article is applicable to a Reformed church in America, a true Reformed Dutch church in the United States of America, a Presbyterian church in connection with the Presbyterian church in the United States of America, a Reformed Presbyterian church or to an Evangelical Lutheran church, incorporated after October first, eighteen hundren and ninety-five, except as declared to be so applicable by the next preceding article of this chapter; this article is applicable to such a church incorporated before October first, eighteen hundred and ninety-five, if the trustees thereof were then elective as such, and so long as they continue to be elective as such. The next preceding article of this chapter is applicable to such a church incorporated before October first, eighteen hundred and ninety-five, if its trustees were not then elective as such and so long as its trustees continue not to be elective as such. This article is applicable to churches of all other denominations. [*Thus am. by L.* 1896, *chs.* 35, 190 *and* 336, *taking effect April* 21, 1896.]

[The following clause is added to § 85 by L. 1896, ch. 324, taking effect April 18, 1896:]

Provided, however, that any Methodist Episcopal church in the city of Brooklyn which is now or hereafter may become a beneficiary of the Brooklyn church society by receiving from said society contributions to its current income, or by loan or loans, gift or gifts from the same, may elect to fill any vacancy or vacancies existing in its board of trustees by expiration of term, or for any other cause, at any corporate meeting legally

R. S., 9th ed., p. 1438.

called, not to exceed at any time three members of said board of trustees, who shall have been nominated to such positions by the Brooklyn Church society, without regard to any qualifications for trustees required by this act, and such trustees or their successors, nominated and elected in the same manner, shall continue in office so long as said church shall be a beneficiary of said society. Notice of expiration of term of said trustees shall be given by the said church to the said society not less than one month before said expiration of term.

R. S., 9th ed., pp. 1438, 1444, 1446, 1457, 1465. §§ 11, 42, 45, 71, 142 of the Membership Corporations Law are amended to read as follows:

§ 11. **Powers, duties and liabilities of directors.**—The directors of every membership corporation, except a corporation for the prevention of cruelty to children or animals, and a corporation for promoting or maintaining the principles of a political party, created under or by a general or special law, shall present at its annual meeting a report, verified by the president and treasurer, or by a majority of the directors, showing the whole amount of real and personal property owned by it, where located, and where and how invested, the amount and nature of the property acquired during the year immediately preceding the date of the report and the manner of its acquisition; the amount applied, appropriated or expended during the year immediately preceding such date, and the purposes, objects or persons to or for which such applications, appropriations or expenditures have been made; and the names and places of residence of the persons who have been admitted to membership in the corporation during such year, which report shall be filed with the records of the corporation and an abstract thereof entered in the minutes of the proceedings of the annual meeting. The directors of every membership corporation, except a society for the prevention of cruelty to children or animals, and a corporation formed for promoting or maintaining the principles of a political party, shall be jointly and severally liable for any debt of the corporation contracted while they are directors, payable within one year or less from the date it was contracted, if an action for the collection thereof be brought against the corporation within one year after the debt

becomes due, and an execution issued therein to the county where its office is, or where a certificate of its incorporation is filed, be returned wholly or partly unsatisfied; and if the action against the directors to recover the amount unsatisfied be commenced within one year after the return of such execution; provided, however, that no director of a corporation formed for promoting or maintaining the principles of a political party shall be liable for any such debt unless the contracting of the same shall have been specifically authorized by the board of directors at a meeting thereof, and assented to thereat by the directors sought to be charged therewith. [*Thus am. by L.* 1896, *ch.* 542, *taking effect May* 11, 1896.]

§ 42. **Cemeteries in Kings, Queens, Rockland, Westchester and Erie counties.**— A cemetery corporation shall not take by deed, devise or otherwise any land in either of the counties of Kings, Queens, Rockland, Westchester or Erie for cemetery purposes, or set apart any ground for cemetery purposes in either such county, unless the consent of the board of supervisors thereof be first obtained, which board may grant such consent upon such conditions, regulations and restrictions as, in its judgment, the public health or the public good may require. Notice of application to any such board for such consent shall be published once a week for six weeks, in two newspapers of the county having the largest circulation therein, stating the time when the application will be made, a brief description of the lands proposed to be acquired, their location and the quantity thereof. All persons interested therein may be heard on the presentation of such application; and if such consent is granted, the corporation may take and hold the lands designated in such consent, which shall not authorize any one corporation to take or hold more than two hundred and fifty acres. The board of supervisors of each such county may, from time to time, make such regulations as to the mode of burials in any cemetery in the county as, in its judgment, the public health may require. [*Thus am. by L.* 1896, *ch.* 193, *taking effect April* 1, 1896.]

§ 45. **Acquisition of property.**— If the certificate of incorporation or by-laws of a cemetery corporation do not exclude any person from the privilege, on equal terms with other persons, of purchasing a lot or of burial in its cemetery, such corporation may,

R. S., 9th ed., pp. 1446-7.

from time to time, acquire by condemnation, exclusively for the purposes of a cemetery, not more than two hundred acres of land in the aggregate, forming one continuous tract, wholly or partly within the county in which its certificate of incorporation is recorded, except as in this article otherwise provided, as to the acquisition of land in the counties of Kings, Queens, Rockland and Westchester. A cemetery corporation may acquire by condemnation, exclusively for the purposes of a cemetery, any real estate or any interest therein necessary to supply water for the uses of such cemetery, and the right to lay, relay, repair and maintain conduits and water pipes with connections and fixtures, in, through or over the lands of others; the right to intercept and divert the flow of waters from the lands of riparian owners, and from persons owning or interested in any waters. But no such cemetery corporation shall have power to take or use water from any of the canals of this state, or any canal reservoirs as feeders, or any streams which have been taken by the state for the purpose of supplying the canals with water. A cemetery corporation may acquire, otherwise than by condemnation, real property as aforesaid and additional real property, not exceeding in value two hundred thousand dollars, for the purposes of the convenient transaction of its general business, no portion of which shall be used for the purposes of a cemetery. A cemetery corporation may acquire, otherwise than by condemnation, additional real or personal property, absolutely or in trust, in perpetuity or otherwise; and use the same or the income therefrom in pursuance of the terms on which the same is acquired, for the following purposes, only:

1. The improvement or embellishment, but not the enlargement of its cemetery;

2. The construction or preservation of a building, structure, fence or walk therein;

3. The renewal, erection or preservation of a tomb, monument, stone, fence, railing or other erection or structure on or around any lot therein; or,

4. The planting or cultivation of trees, shrubs, flowers or plants in or about a lot therein.

A cemetery corporation may accept a conveyance of real property held by a religious corporation for burial purposes, or by

R. S., 9th ed., pp. 1457, 1465.

trustees for such purposes, if all such trustees, living and residing in this state, unite in the conveyance, subject to all burdens, trusts and conditions to which the title of such grantors was subject. Lots previously sold in any such lands, and grants for burial purposes therein previously made, shall not be affected by any such conveyance; nor shall any grave, monument or other erection thereupon, or any remains therein, be disturbed or removed without the consent of the lot owner, or if there be no such owner, without the consent of the heirs of the persons whose remains are buried in such grave. No cemetery shall hereafter be located in any city or incorporated village, without the consent of the common council of such city, or of the board of trustees of such village, as the case may be. [*Thus am. by L.* 1896, *ch.* 325, *taking effect April* 18, 1896.]

§ 71. **Prohibition of new corporations in certain counties.**—A corporation for the prevention of cruelty to animals shall not hereafter be incorporated for the purpose of conducting its operations in the counties of New York, Kings, Queens, Richmond, Suffolk, Westchester or Rensselaer, or in any other county if thereby there would be two or more such corporations formed for the purpose of conducting operations in such county. [*Thus am. by L.* 1896, *ch.* 469, *taking effect May* 9, 1896.]

§ 142. **Annual fairs and premiums.**— Every such corporation, the American Institute in the city of New York, and the New York State Agricultural society, shall hold annual fairs and exhibitions, and distribute premiums. Such a county or town corporation may, by a two-thirds vote of the members present and voting at a regular meeting, or at a special meeting, duly called for that purpose, fix the place where the annual fair and exhibition of the corporation shall be held. Such corporations and societies shall regulate and award premiums on such articles, productions and improvements as they deem best calculated to promote the agricultural and household manufacturing interests of the state, having special reference to the net profits which accrue or are likely to accrue from the mode of raising the crop, or stock, or fabricating the article exhibited, so that the award be given to the most economical or profitable mode of production. [*Thus am. by L.* 1896, *ch.* 476, *taking effect May* 9, 1896.]

R. S., 9th ed., p. 1478. § 10 of the University Law is partly superseded by L. 1896, ch. 493, § 2, taking effect May 11, 1896, which reads as follows:

§ 2. The state geologist and palaeontologist now in office is continued therein at his present salary of three thousand six hundred dollars a year during good behavior, with power to appoint and remove his assistants, and to expend, subject only to the approval and audit of the state comptroller, all money appropriated for his use by the legislature. His annual report shall be printed as heretofore as a part of the state museum report; but during the incumbency of the present state geologist and palaeontologist the office shall be independent of the trustees of the state museum, who are relieved of all responsibility for his department, notwithstanding the provisions of section one of this act and sections ten and twenty-two of chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-two as amended.

[§ 1 of this act amends § 22 of the University Law.]

R. S., 9th ed., p. 1481. L. 1845, ch. 85, § 7, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 1482. § 22 of the University Law is amended to read as follows:

§ 22. **State museum; how constituted.**— All scientific specimens and collections, works of art, objects of historic interest and similar property appropriate to a general museum, if owned by the state and not placed in other custody by a specific law, shall constitute the state museum, and one of its officers shall annually inspect all such property not kept in the state museum rooms, and the annual report of the museum to the legislature shall include summaries of such property, with its location, and any needed recommendations as to its safety or usefulness. Unless otherwise provided by law, the state museum shall include the work of the state geologist and palaeontologist, the state botanist and the state entomologist, who, with their assistants, shall be included in the scientific staff of the state museum. [*Thus am. by L.* 1893, *ch.* 488; *L.* 1896, *ch.* 493, § 1, *taking effect May* 11, 1896.]

R. S., 9th ed., pp. 1506, 1509.

R. S., 9th ed., pp. 1506–1617. Title 2, §§ 6, 13; title 3, § 4, subd. 1; title 6, §§ 4, 9; title 7, § 14, subd. 19; §§ 38, 47, subds. 9 and 10, 81; title 8, §§ 1, 3-5, 7, 8, 10, 15, subd. 11; title 10, §§ 6, 9; title 15, §§ 14, 15, 17, 19, 20, 24; title 16, §§ 3, 4, 7, 8, 9 of the Consolidated School Law are amended to read as follows:

Tit. 2, § 6. He shall apportion one part of such remainder equally among the school districts and cities from which reports shall have been received in accordance with law, as follows: Making the distributive portion of each district quota one hundred dollars. To entitle a district to a distributive portion or district quota, a qualified teacher, or successive qualified teachers, must have actually taught the common school of the district for at least the term of time hereinafter mentioned, during the last preceding school year. For every additional qualified teacher and successors who shall have actually taught in said school during the whole of said term, the district shall be entitled to another distributive quota; but pupils employed as monitors, or otherwise, shall not be deemed teachers. The aforementioned term, during every school year, shall be one hundred and sixty days of school, inclusive of legal holidays that may occur during the term of said schools, and exclusive of Saturdays. No Saturday shall be counted as part of said one hundred and sixty days of school, and no school shall be in session on a legal holiday. A deficiency not exceeding three weeks during any school year, caused by a teacher's attendance upon a teachers' institute within the county, shall be excused by the superintendent of public instruction. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 2, § 13, subd. 6. They shall apportion all of such remaining unapportioned moneys in the like manner and upon the same basis among such school districts and parts of districts in proportion to the aggregate number of days of attendance of the pupils resident therein, between the ages of five and eighteen years, at their respective schools during the last preceding school year, and also such children residing therein over four years of age who shall have attended any free kindergarten school legally established. The aggregate number of days in attendance of the pupils is to be ascertained from the records thereof, kept by the teachers as hereinafter prescribed, by adding together the whole number of days' attendance of each and every pupil in the district,

or part of a district. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 3, § 4, subd. 1. To disburse the school moneys in his hands applicable to the payment of teachers' wages, upon and only upon the written orders of a sole trustee or a majority of the trustees, in favor of qualified teachers. But whenever the collector in any school district shall have given bonds for the due and faithful performance of the duties of his office as disbursing agent, as required by section eighty of title seven of this act, or whenever any school district shall elect a treasurer as hereinafter provided, the said supervisor shall, upon the receipt by him of a copy of the bond executed by said collector or treasurer as hereinafter required, certified by the trustee or trustees, pay over to such collector or treasurer, all moneys in his hands applicable to the payment of teachers' wages in such district, and the said collector or treasurer shall disburse such moneys so received by him upon such orders as are specified herein to the teachers entitled to the same. [*Thus am. by L.* 1896, *ch.* 177, *taking effect April* 21, 1896.]

Tit. 6, § 4. Within ten days after making and filing such order he shall give at least a week's notice in writing to one or more of the assenting and dissenting trustees of any district or districts to be affected by the proposed alterations, that at a specified time, and at a named place within the town in which either of the districts to be affected lies he will hear the objections to the alteration. The trustees of any district to be affected by such order may request the supervisor and town clerk of the town or towns, within which such district or districts shall wholly or partly lie, to be associated with the commissioner. At the time and place mentioned in the notice the commissioner or commissioners, with the supervisors and town clerks, if they shall attend and act, shall hear and decide the matter; and the decision shall be final unless duly appealed from. Such decision must either affirm or vacate the order of the commissioner, and must be filed with and recorded by the town clerk of the town or towns in which the district or districts to be affected shall lie, and a tie vote shall be regarded a decision for the purposes of an appeal on the merits. Upon such appeal the superintendent of public instruction may affirm, modify or vacate the

order of the commissioner or the action of the local board. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 6, § 9. Any school commissioner may dissolve one or more districts, and may from such territory form a new district; he may also unite a portion of such territory to any existing adjoining district or districts. When two or more districts shall be consolidated into one, the new district shall succeed to all the rights of property possessed by the annulled districts. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 7, § 14, subd. 19. Whenever any district shall have contracted with the school authorities of any city or village or other school district for the education therein of the pupils residing in such common school district, the inhabitants thereof entitled to vote are authorized to provide, by tax or otherwise, for the conveyance of the pupils residing therein to the schools of such city, village or district with which such contract shall have been made, and the trustees thereof may contract for such conveyance when so authorized in accordance with such rules and regulations as they may establish. [*Added by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 7, § 38. No teacher is qualified, within the meaning of this act, who does not possess an unannulled diploma granted by a state normal school, or an unrevoked and unannulled certificate of qualification given by the superintendent of public instruction, or an unexpired certificate of qualification given by the school commissioner within whose district such teacher is employed. No person shall be deemed to be qualified who is under the age of eighteen years. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 7, § 47, subd. 9. To contract with and employ all teachers in the district school or schools as are qualified under the provisions of this act, and to designate the number of teachers to be employed; to determine the rate of compensation to be paid to each teacher and the term of the employment of each teacher, respectively, and to determine the terms of school to be held in their respective districts during each school year; but no person who is related to any trustee or trustees by blood or marriage shall be so employed, except with the approval of two-thirds of the voters of such district present and voting upon the question at an

annual or special meeting of the district. Nor shall the trustees of any school district make any contract for the employment of a teacher for more than one year in advance. Nor shall any trustee or trustees, employ any teacher for a shorter time than ten weeks unless for the purpose of filling out an unexpired term of school. Nor shall any trustee or trustees contract with any teacher whose certificate of qualification shall not cover a period at least as long as that covered by the contract of service. Nor shall any teacher be dismissed in the course of a term of employment, except for reasons which, if appealed to the superintendent of public instruction, shall be held to be sufficient cause for such dismissal. Any failure on the part of a teacher to complete an agreement to teach a term of school without good reason therefor shall be deemed sufficient ground for the revocation of the teacher's certificate. Any person employed in disregard of the foregoing provisions shall have no claim for wages against the district, but may enforce the specific contract made against the trustee or trustees consenting to such employment as individuals. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 7, § 47, subd. 10. All trustees of school districts who shall employ any teacher to teach in any of said districts shall, at the time of such employment, make and deliver to such teacher, or cause to be made and delivered, a contract, in writing, signed by said trustee or trustees, or by some person duly authorized by said trustee or trustees to represent him or them in the premises, in which the details of the agreement between the parties, and particularly the length of the term of employment, the amount of compensation and the time or times when such compensation shall be due and payable shall be clearly and definitely set forth. The pay of any teacher employed in any of the school districts of this state shall be due and payable at least as often as at the end of each calendar month of the term of employment. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 7, § 81. The collector, on the receipt of a warrant for the collection of taxes, shall give notice to the taxpayers of the district by publicly posting written or printed, or partly written and partly printed notices in at least three public places places in such district, one of which shall be on the outside of the front door of the school-

house, stating that he has received such warrant and will receive all such taxes as may be voluntarily paid to him within two weeks from the time of posting said notice. Such collector shall also give a like notice, either personally or by mail, at least ten days previous to the expiration of the two weeks aforesaid, to the ticket agent at the nearest station of any railroad corporation, or the president, secretary, general or division superintendent, or manager of any canal or pipe line, assessed for taxes upon the tax list delivered to him with the aforesaid warrant, and where the amount of the tax is one dollar or more the collector shall also give a like notice to all nonresident taxpayers on said list whose residence or post-office address may be known to such collector, or which may be ascertained by him upon inquiry of the trustees and clerk of his district, and no school collector shall be entitled to recover from any railroad corporation, canal company or pipe line, or nonresident taxpayer more than one per centum fees on the taxes assessed against such corporation or nonresident, unless such notice shall have been given as aforesaid; and in case the whole amount of taxes shall not be so paid in, the collector shall forthwith proceed to collect the same. He shall receive for his services, on all sums paid in as aforesaid, one per centum, and upon all sums collected by him, after the expiration of the time mentioned, five per centum, except as hereinbefore provided; and in case a levy and sale shall be necessarily made by such collector, he shall be entitled to traveling fees, at the rate of ten cents per mile, to be computed from the school-house in such district. [*Thus am. by L.* 1896, *ch.* 575, *taking effect May* 12, 1896.]

Tit. 8, § 1. Whenever fifteen persons entitled to vote at any meeting of the inhabitants of any school district in the state shall sign a request for a meeting, to be held for the purpose of determining whether a union free school shall be established therein in conformity with the provisions of this title, it shall be the duty of the trustees of such district, within ten days after such request shall have been presented to them, to give public notice that a meeting of the inhabitants of such district entitled to vote thereat will be held for such purpose as aforesaid, at the schoolhouse, or other more suitable place, in such district, on a day and at an hour in such notice to be specified,

not less than twenty nor more than thirty days after the publication of such notice. If the trustees shall refuse to give such notice, or shall neglect to give the same, for twenty days, the superintendent of public instruction may authorize and direct any inhabitant of such district to give the same. The qualifications of the inhabitants entitled to vote at such meeting, shall be sufficiently set forth in the notice aforesaid. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 8, § 3. The reasonable expense of such notices, and of their publication and service, shall be chargeable upon the district, in case a union free school is established by the meeting so convened, to be levied and collected by the trustees, as in case of taxes now levied for school purposes; but in the event that such union free school shall not be established, then the said expense shall be chargeable upon the inhabitants signing the request, jointly and severally, to be sued for, if necessary, in any court having jurisdiction of the same. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 8, § 4. Whenever fifteen persons, entitled as aforesaid, from each of two or more adjoining districts, shall unite in a request for a meeting of the inhabitants of such districts, to determine whether such districts shall be consolidated by the establishment of a union free school therefor and therein, it shall be the duty of the trustees of such districts, or a majority of them, to give like public notice of such meeting, at some convenient place within such districts, and as central as may be, within the time, and to be published and served in the manner set forth in the first and second sections of this title, in each of such districts. The reasonable expenses of preparing, publishing and serving such notices shall be chargeable upon the union free school district, and be collected by tax, if a union free school shall be established pursuant to such request, but otherwise the signers of the request shall be jointly and severally liable for such expenses. The superintendent of public instruction may order such meeting under the conditions and in the manner prescribed in the first section of this tite. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 8, § 5. Any such meeting held pursuant to the foregoing provisions shall be organized by the election of a chairman and secretary, and may be adjourned from time to time, by a majority

vote, provided that such adjournment shall not be for a longer period than ten days; and whenever at any such meeting duly called and held under the provisions of sections one and two of this title at least fifteen qualified voters of the district shall be present, or at such meeting duly called and held under the provisions of section four of this title, at least fifteen qualified voters of each of the two or more adjoining districts joining in the request shall be present, such meeting may, by the affirmative vote of a majority present and voting, adopt a resolution to establish a union free school in said district, or to consolidate the two or more adjoining districts by establishing a union free school in said districts pursuant to the notice of said meeting. If said meeting shall determine to establish a union free school in said district or districts as aforesaid, it shall be lawful for such meeting thereafter to proceed to the election by ballot, of not less than three nor more than nine trustees, who shall, by the order of such meeting, be divided into three several classes, the first to hold until one, the second until two, and the third until three years from the first Tuesday of August next following, except as in the next section provided. Thereafter there shall be elected in all union free school districts whose limits do not correspond with those of an incorporated village or city, at the annual meeting of said districts, trustees of said districts, to supply the places of those whose term of office, by the classification aforesaid, are about to expire. The trustees, so as aforesaid elected, shall enter at once upon their offices, and the office of any existing trustee or trustees in such district or districts, before the establishment of a union free school therein, shall cease, except for the purposes stated in section twelve of title six of this act. Neither a school commissioner nor a supervisor is eligible to be a member of any board of education, and the acceptance of either of said offices by a member of said board vacates his office as such member. The said trustees and their successors in office shall constitute the board of education of and for the union free school district for which they are elected, and the designation of such district as union free school district number of the town of shall be made by the school commissioner having jurisdiction of the district; and the said board shall have the name and style of the board of education of (adding the designation aforesaid); copies of said request, notice of meeting, order

of the superintendent directing some inhabitant to call said meeting, if any, and minutes of said meeting or meetings, duly certified by the chairman and secretary thereof, shall be by them, or either of them, transmitted and deposited, one to and with the town clerk, one to and with the school commisioner in whose jurisdiction said districts are located, and one to and with the superintendent of public instruction; but when at any such meeting, the question as to the establishment of a union free school shall not be decided in the affirmative, as aforesaid, then all further proceedings at such meeting, except a motion to reconsider or adjourn, shall be dispensed with, and no such meeting shall be again called within one year thereafter. And when any such meeting shall have established a union free school in said district or districts, such union free school district shall not be dissolved within the period of one year from the first Tuesday of August next after such meeting. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 8, § 7. The said boards of education are hereby severally created bodies corporate, and each shall, at its first meeting, and at each annual meeting thereafter, elect one of their number president. In every union free school district other than such whose limits correspond with those of an incorporated city or village, the qualified voters of such district, at each annual meeting shall elect a clerk of said district, who shall also act as clerk of the board of education of such district. Such clerk shall be elected by ballot, and must receive a majority of the votes of the qualified voters of the district present and voting. Such clerk must be a qualified voter in said district, and a person other than a trustee, or a teacher employed in said district. He shall perform all the clerical and other duties pertaining to his office, and for his services he shall be entitled to receive such compensation as shall be fixed at such meeting. In case no provision is made at an annual meeting of the inhabitants for the election of a clerk, then and in that case the board of education shall appoint one of their number to act as clerk, and fix his compensation. Said board of education shall have power to appoint one of the taxable inhabitants of their district treasurer, and fix his compensation, and another collector of the moneys to be raised within the same for school purposes, who shall severally hold such appointments during the pleasure of the board.

R. S., 9th ed., p. 1565.

Such treasurer and collector shall each, and within ten days after notice in writing of his appointment, duly served upon him, and before entering upon the duties of his office, execute and deliver to the said board of education a bond, with such sufficient penalty and sureties as the board may require, conditioned for the faithful discharge of the duties of his office. And in case such bond shall not be given within the time specified, such office shall thereby become vacant, and said board shall thereupon, by appointment, supply such vacancy. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 8, § 8. Every person of full age, residing in any union free school district, and who has resided therein for a period of thirty days next preceding any annual or special meetings held therein, and a citizen of the United States, who owns, or hires, or is in the possession under a contract of purchase, of real property in such school district liable to taxation for school purposes; and every such resident of such district who is a citizen of the United States of twenty-one years of age, and is the parent of a child or children of school age, some one or more of whom shall have attended the district school in said district for a period of at least eight weeks within one year preceding such school meeting; and every such person not being the parent, who shall have permanently residing with him or her a child or children of school age, some one or more of whom shall have attended the district school in said district for a period of at least eight weeks within one year preceding such school meeting; and every such resident and citizen as aforesaid who owns any personal property assessed on the last preceding assessment-roll of the town, exceeding fifty dollars in value, exclusive of such as is exempt from execution, and no other, shall be entitled to vote at any school meeting held in said district, under and pursuant to the provisions of this title. No person shall be deemed to be ineligible to vote at any such school district meeting by reason of sex, who has one or more of the qualifications required by this section. No person shall be eligible to hold any school district office in any union free school district unless he or she is a qualified voter in such district, and is able to read and write. Not more than one member of a family shall be a member of the same board of education in any school district. [*Thus am. by L.* 1895, *ch.* 337; *L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

R. S., 9th ed., pp. 1568–9.

Tit. 8, § 10. A majority of the voters of any union free school district, other than those whose limits correspond with an incorporated city or village, present at any annual or special district meeting, duly convened, may authorize such acts and vote such taxes as they shall deem expedient for making additions, alterations or improvements to or in the sites or structures belonging to the district, or for the purchase of other sites or structures, or for a change of sites, or for the erection of new buildings, or for buying apparatus, or fixtures, or for paying the wages of teachers and the necessary expenses of the school, or for such other purpose relating to the support and welfare of the school as they may, by resolution, approve; the designation of a site or sites by the district meeting shall be by written resolution containing a description thereof by metes and bounds, and such resolution must receive the assent of a majority of the qualified voters present and voting at said meeting, to be ascertained by taking and recording the ayes and noes. On all propositions arising at said meetings involving the expenditure of money, or authorizing the levy of a tax or taxes in one sum or by installments, the vote thereon shall be by ballot, or ascertained by taking and recording the ayes and noes of such qualified voters attending and voting at such meetings; and they may direct the moneys so voted to be levied in one sum, or by installments, but no addition to or change of site or purchase of a new site or tax for the purchase of any new site or structure, or for the purchase of an addition to the site of any school-house, or for building any new school-house, or for the erection of an addition to any school-house already built; shall be voted at any such meeting unless a notice by the board of education stating that such tax will be proposed, and specifying the amount and object thereof, shall have been published once in each week for the four weeks next preceding such district meeting, in two newspapers if there shall be two, or in one newspaper if there shall be but one, published in such district. But if no newspaper shall then be published therein, the said notice shall be posted in at least twenty of the most public places in said district twenty days before the time of such meeting. And whenever a tax for any of the objects hereinbefore specified shall be legally voted the boards of education shall make out their tax list, and attach their warrant thereto, in the manner provided in article seven of title seven of this act,

R. S., 9th ed., pp. 1568-9, 1575.

for the collection of school district taxes, and shall cause such taxes or such installments to be collected at such times as they shall become due. No vote to raise money shall be rescinded, nor the amount thereof be reduced at any subsequent meeting, unless it be an adjourned meeting or a meeting called by regular and legal notice, which shall specify the proposed action, and at which the vote upon said proposed reduction or rescinding shall be taken by ballot or by taking and recording the ayes and noes of the qualified voters attending and voting thereat. For the purpose of giving effect to these provisions, trustees or boards of education are hereby authorized, whenever a tax shall have been voted to be collected in installments for the purpose of building a new school-house or building an addition to a school-house, or making additions, alterations or improvements to buildings or structures belonging to the district, or for the purchase of a new site or for an addition to a site, to borrow so much of the sum voted as may be necessary at a rate of interest not exceeding six per centum, and to issue bonds or other evidences of indebtedness therefor, which shall be a charge upon the district, and be paid at maturity, and which shall not be sold below par; due notice of the time and place of the sale of such bonds shall be given by the board of education at least ten days prior thereto by publication twice in two newspapers, if there be two, or in one newspaper if there be but one published in such district. But if no newspaper shall then be published therein, the said notice shall be posted in at least ten of the most public places in said district ten days before the sale. It shall be the duty of the trustees or the persons having charge of the issue or payment of such indebtedness, to transmit a statement thereof to the clerk of the board of supervisors of the county in which such indebtedness is created, annually, on or before the first day of November. [*Thus am. by L.* 1895, *ch.* 273; *L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

[Tit. 8, § 14 is amended by L. 1896, ch. 196, by omitting Richmond county from the former last sentence, and adding the following sentence: "In Richmond county, whenever any district shall have determined to hold its annual election on Wednesday following the date of its annual school meeting, the same shall be held between the hours of four o'clock and nine o'clock in the evening."]

Tit. 8, § 15, subd. 11. To contract with and employ such persons as by the provisions of this act are qualified teachers in the

several departments of instruction in said school, and at the time of such employment shall make and deliver to each teacher, or cause to be made and delivered, a contract in writing, signed by the members of said board, or by some person duly authorized by said board to represent them in the premises, in which the details of the agreement between the parties and particularly the length of the term of employment, the amount of compensation and time or times when such compensation shall be due and payable, shall be clearly and definitely set forth. The pay of any teacher employed in the public schools of this state shall be due and payable at least as often as at the end of each calendar month of the term of employment. No person who is related by blood or marriage to any member of a board of education shall be employed as a teacher by such board, except upon the consent in writing of two-thirds of the members thereof, to be entered upon the proceedings of the board. No teacher shall be removed during a term of employment unless for neglect of duty, incapacity to teach, immoral conduct, or other sufficient cause. Also to pay the wages of such teacher out of the moneys appropriated for that purpose. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 10, § 6. Willful failure on the part of a teacher to attend a teachers' institute as required, shall be considered sufficient cause for the revocation of such teacher's license, and a willful failure on the part of trustees to close their schools during the holding of an institute as required, shall be considered sufficient cause for withholding the public moneys to which such districts would otherwise be entitled. Any person under contract to teach in a school in any commissioner district, is required to attend an institute if held for that district, even though at the time the school is not in session, and shall be entitled to receive wages for such attendance. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 10, § 9. There shall be annually appropriated out of the free school fund the sum of six thousand dollars for the establishment and maintenance of summer institutes in accordance with the provisions of this section. It shall be the duty of the superintendent of public instruction to establish and maintain three summer institutes having a course of at least three weeks' duration for the training and instruction of teachers for the

common schools of the state, to be located at three convenient and accessible points therein to be selected by him. Such institutes shall be supplied with proper instructors, to be appointed by the state superintendent for that purpose, utilizing so far as practicable, those who are employed as institute conductors. Admission to said institutes and all the advantages thereof, shall be free to all teachers of the state and those preparing for teaching therein. The superintendent of public instruction shall establish such regulations for the government of such summer institutes as he may deem best, and may establish regulations in regard to examinations thereat and certificates of qualification to be issued to graduates therefrom as shall, in his judgment, best furnish incentives and encouragement to teachers to attend such institutes. The conductor in charge of such institutes shall transmit to the superintendent of public instruction at the close thereof, in such form and at such time as the superintendent shall prescribe, a full report of such institute, including a list of all the teachers in attendance, the number of days attended by each teacher, together with such other statistical information as the superintendent may require. He shall present a full statement of all the expenses incurred by him in carrying on the institute, with vouchers for all expenditures made, accompanying the same by an affidavit of the correctness of the statements made and accounts presented. The sum of six thousand dollars is hereby appropriated out of the free school fund for the purposes of carrying out the provisions of this act. [*Added by L* 1896, *ch.* 156, *taking effect March* 30, 1896.]

Tit. 15, § 14. Whenever any school district adjoining a city or village or adjoining any union free school district by a vote of a majority of the qualified voters of such district, shall empower the trustees thereof, the said trustees shall enter into a written contract with the board of education of such city, village, or union free school district, whereby all the children of such district may be entitled to be taught in the public schools of such city, village or union free school district for a period of not less than one hundred and sixty days in any school year, upon filing a copy of such contract duly certified by the trustees of such school district, and by the secretary of the board of education of such city, village or union free school district in the office

of the state superintendent of public instruction. Such school district shall be deemed to have employed a competent teacher for such period, and shall be entitled to receive one distributive district quota each year, during which such contract shall be continued. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 15, § 15. The board of education of any city, village or union free school district so contracting with any school district, shall report the number of persons of school age in such district, together with those resident in said city, village or union free school district, the same as though they were actual residents of the city, village or union free school district, and shall report for the pupils attending such schools from such adjoining districts to the superintendent of public instruction, the same as though they were residents of such city, village or union free school district. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 15, § 17. All officers or boards of officers who shall employ any teacher to teach in any of the public schools of this state shall, at the time of such employment, make and deliver to such teacher, or cause to be made and delivered, a contract in writing, signed by said officer, or by the members of said board, or by some person duly authorized by said board, to represent them in the premises, in which the detail of the agreement between the parties, and particularly the length of the term of employment, the amount of compensation and the time or times when such compensation shall be due and payable shall be clearly and definitely set forth. But nothing herein contained shall be deemed to abridge or otherwise affect the term of employment of any teacher now or hereafter employed in the public schools, nor to repeal or affect any provision of special laws concerning the employment or removal of teachers now in force in any particular locality. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 15, § 19. The nature of alcoholic drinks and other narcotics and their effects on the human system shall be taught in connection with the various divisions of physiology and hygiene, as thoroughly as are other branches in all schools under state control, or supported wholly or in part by public money of the state, and also in all schools connected with reformatory institutions.

R. S., 9th ed., pp. 1602–3.

All pupils in the above-mentioned schools below the second year of the high school and above the third year of school work computing from the beginning of the lowest primary, not kindergarten, year, or in corresponding classes of ungraded schools, shall be taught and shall study this subject every year with suitable text-books in the hands of all pupils, for not less than three lessons a week for ten or more weeks, or the equivalent of the same in each year, and must pass satisfactory tests in this as in other studies before promotion to the next succeeding year's work; except that, where there are nine or more school years below the high school, the study may be omitted in all years above the eighth year and below the high school, by such pupils as have passed the required tests of the eighth year. In all schools above-mentioned, all pupils in the lowest three primary, not kindergarten, school years or in corresponding classes in ungraded schools shall each year be instructed in this subject orally for not less than two lessons a week for ten weeks, or the equivalent of the same in each year, by teachers using text-books adapted for such oral instruction as a guide and standard, and such pupils must pass such tests in this as may be required in other studies before promotion to the next succeeding year's work. Nothing in this act shall be construed as prohibiting or requiring the teaching of this subject in kindergarten schools. The local school authorities shall provide needed facilities and definite time and place for this branch in the regular courses of study. The text-books in the pupils' hands shall be graded to the capacities of fourth year, intermediate, grammar and high school pupils, or to corresponding classes in ungraded schools. For students below high school grade such text-books shall give at least one-fifth their space, and for students of high school grade shall give not less than twenty pages to the nature and effects of alcoholic drinks and other narcotics. This subject must be treated in the text-books in connection with the various divisions of physiology and hygiene, and pages on this subject in a separate chapter at the end of the books shall not be counted in determining the minimum. No text-book on physiology not conforming to this act shall be used in the public schools except so long as may be necessary to fulfill the conditions of any legal adoption existing at the time of the passage of this act. All

regents' examinations in physiology and hygiene shall include a due proportion of questions on the nature of alcoholic drinks and other narcotics, and their effects on the human system. [*Thus am. by L.* 1895, *ch.* 1041; *L.* 1896, *ch.* 901, *taking effect May* 26, 1896.]

Tit. 15, § 20. In all normal schools, teachers' training classes and teachers' institutes, adequate time and attention shall be given to instruction in the best methods of teaching this branch, and no teacher shall be licensed who has not passed a satisfactory examination in the subject, and the best methods of teaching it. On satisfactory evidence that any teacher has willfully refused to teach this subject, as provided in this act, the state superintendent of public instruction shall revoke the license of such teacher. No public money of the state shall be apportioned by the state superintendent of public instruction or paid for the benefit of any city until the superintendent of schools therein shall have filed with the treasurer or chamberlain of such city an affidavit, and with the state superintendent of public instruction a duplicate of such affidavit, that he has made thorough investigation as to the facts, and that to the best of his knowledge, information, and belief, all the provisions of this act have been complied with in all the schools under his supervision in such city during the last preceding legal school year; nor shall any public money of the state be apportioned by the state superintendent of public instruction, or by school commissioners, or paid for the benefit of any school district, until the president of the board of trustees, or in the case of common school districts the trustee or some one member of the board of trustees, shall have filed with the school commissioner having jurisdiction an affidavit that he has made thorough investigation as to the facts and that to the best of his knowledge, information, and belief, all the provisions of this act have been complied with in such district, which affidavit shall be included in the trustees' annual report, and it shall be the duty of every school commissioner to file with the state superintendent of public instruction an affidavit in connection with his annual report, showing all districts in his jurisdiction that have and those that have not complied with all the provisions of this act, according to the best of his knowledge, information and belief based on a thorough investi-

gation by him as to the facts; nor shall any public money of the state be apportioned or paid for the benefit of any teachers' training class, teachers' institute or other school mentioned herein until the officer having jurisdiction or supervision thereof shall have filed with the state superintendent of public instruction an affidavit that he has made thorough investigation as to the facts and that to the best of his knowledge, information and belief, all the provisions of this act relative thereto have been complied with. The principal of each normal school in the state shall at the close of each of their school years file with the state superintendent of public instruction an affidavit that all the provisions of this law applicable thereto have been complied with during the school year just terminated and until such affidavit shall be filed no warrant shall be issued by the state superintendent of public instruction for the payment by the treasurer of any part of the money appropriated for such school. It shall be the duty of the state superintendent of public instruction to provide blank forms of affidavit required herein for use by the local school officers, and he shall include in his annual report a statement showing every school, city, or district which has failed to comply with all the provisions of this act during the preceding school year. On complaint by appeal to the state superintendent of public instruction by any patron of the schools mentioned in the last preceding section, or by any citizen, that any provision of this act has not been complied with in any city or district, the state superintendent of public instruction shall make immediate investigation, and on satisfactory evidence of the truth of such complaint, shall thereupon and thereafter withhold all public money of the state to which such city or district would otherwise be entitled, until all the provisions of this act shall be complied with in said city or district, and shall exercise his power of reclamation and deduction under section nine of article one of title two of the consolidated school law. [*Thus am. by L.* 1895, *ch.* 1041; *L.* 1896, *ch.* 901, *taking effect May* 26, 1896.]

Tit. 15, § 24. The school authorities of any union free or common school district, located in any county having less than one million inhabitants, may establish and maintain one or more free kindergarten schools. The moneys for the support of such school shall be raised in like manner as for the support of the other public schools of such district. No child under the age of

four years shall be admitted to the schools, and the local school authorities are hereby empowered to fix the highest age limit of children who may attend. All teachers employed in these schools shall be licensed in accordance with rules and regulations established by the superintendent of public instruction, and shall each share in the distribution of district quotas. The attendance of children under the age of five years who may be enrolled in the schools shall be reported separately and shall be counted in the distribution of public money. [*Thus am. by L.* 1896, *ch.* 264, *taking effect May* 5, 1896.]

Tit. 16, § 3. **Required attendance upon instruction.**—Every child between eight and sixteen years of age, in proper physical and mental condition to attend school, shall regularly attend upon instruction at a school in which at least the common school branches of reading, spelling, writing, arithmetic, English grammar and geography are taught, or upon equivalent instruction by a competent teacher elsewhere than at a school, as follows: Every such child between fourteen and sixteen years of age, not regularly and lawfully engaged in any useful employment or service, and every such child between eight and twelve years of age, shall so attend upon instruction as many days annually, during the period between the first days of October and the following June, as the public school of the city or district in which such child resides, shall be in session during the same period. Every child between twelve and fourteen years of age in proper physical and mental condition to attend school, shall attend upon instruction during the school year then current, at least eighty secular days of actual attendance, which shall be consecutive except for holidays, vacations and detentions by sickness, which holidays, vacations and detentions shall not be counted as a part of such eighty days, and such child shall, in addition to the said eighty days, attend upon instruction when not regularly and lawfully engaged in useful employment or service. If any such child shall so attend upon instruction elsewhere than at a public school, such instruction shall be at least substantially equivalent to the instruction given to children of like age at the public school of the city or district in which such child resides; and such attendance shall be for at least as many hours of each day thereof, as are required of children of like age at public schools; and no greater total amount of holidays

and vacations shall be deducted from such attendance during the period such attendance is required, than is allowed in such public school to children of like age. Occasional absences from such attendance, not amounting to irregular attendance in the fair meaning of the term, shall be allowed upon such excuses only as would be allowed in like cases by the general rules and practice of such public school. [*Thus am. by L.* 1896, *ch.* 606, *taking effect May* 13, 1896.]

Tit. 16, § 4. **Duties of persons in parental relation to children.**—Every person in parental relation to a child between eight and sixteen years of age, in proper physical and mental condition to attend school, shall cause such child to so attend upon instruction or shall present to the school authorities of his city or district proof by affidavit that he is unable to compel such child to so attend. A violation of this section shall be a misdemeanor, punishable for the first offence by a fine not exceeding five dollars, and for each subsequent offence by a fine not exceeding fifty dollars or by imprisonment not exceeding thirty days or by both such fine and imprisonment. Courts of special sessions shall, subject to removal as provided in sections fifty-seven and fifty-eight of the code of criminal procedure, have exclusive jurisdiction, in the first instance, to hear, try and determine charges of violations of this section, within their respective jurisdictions. [*Thus am. by L.* 1896, *ch.* 606, *taking effect May* 13, 1896.]

Tit. 16, § 7. **Attendance officers**.—The school authorities of each city, union free school district, or common school district whose limits include in whole or in part an incorporated village, shall appoint and may remove at pleasure one or more attendance officers of such city or district, and shall fix their compensation and may prescribe their duties not inconsistent with this act, and may prescribe rules and regulations for the performance thereof; and the superintendent of schools of such city or school district shall supervise the enforcement of this act within such city or school district; and the town board of each town shall appoint one or more attendance officers whose jurisdiction shall extend over all school districts in said town, not by this section otherwise provided for, and shall fix their compensation which shall be a town charge; and such attendance officers appointed by said board shall be removable at the pleasure of the school commis-

sioner in whose commissioner's district such town is situated. [*Thus am. by L.* 1896, *ch.* 606, *taking effect May* 13, 1896.]

Tit. 16, § 8. **Arrest of truants.**—The attendance officer may arrest without warrant any child between eight and sixteen years of age, found away from his home, and who then is a truant from instruction, upon which he is lawfully required to attend within the city or district of such attendance officer. He shall forthwith deliver a child so arrested either to the custody of a person in parental relation to the child, or of a teacher from whom such child is then a truant, or, in case of habitual and incorrigible truants, shall bring them before a police magistrate for commitment by him to a truant school as provided for in the next section. The attendance officer shall promptly report such arrest and the disposition made by him of such child, to the school authorities of the said city, village or district where such child is lawfully required to attend upon instruction or to such person as they may direct. [*Thus am. by L.* 1896, *ch.* 606, *taking effect May* 13, 1896.]

Tit. 16, § 9. **Truant schools.**—The school authorities of any city or school district may establish schools, or set apart separate rooms in public school buildings, for children between eight and sixteen years of age, who are habitual truants from instruction upon which they are lawfully required to attend, or who are insubordinate or disorderly during their attendance upon such instruction, or irregular in such attendance. Such school or room shall be known as a truant school; but no person convicted of crimes or misdemeanors, other than truancy, shall be committed thereto. Such authorities may provide for the confinement, maintenance and instruction of such children in such schools; and they or the superintendent of schools in any city or school district may, after reasonable notice to such child and the persons in parental relation to such child, and an opportunity for them to be heard, and with the consent in writing of the persons in parental relation to such child, order such child to attend such school or to be confined and maintained therein for such period and under such rules and regulations as such authorities may prescribe, not exceeding the remainder of the school year, or may order such child to be confined and maintained during such period in any private school, orphans' home or similar institution controlled by persons of the same religious faith as the persons in parental

R. S., 9th ed., pp. 1615-17.

relation to such child, and which is willing and able to receive, confine and maintain such child, upon such terms as to compensation as may be agreed upon between such authorities and such private school, orphans' home or similar institution. If the persons in parental relation to such child shall not consent to either such order, such conduct of the child shall be deemed disorderly conduct, and the child may be proceeded against as a disorderly person, and upon conviction thereof, if the child was lawfully required to attend a public school, the child shall be sentenced to be confined and maintained in such truant school for the remainder of the current school year; or if such child was lawfully required to attend upon instruction otherwise than at a public school, the child may be sentenced to be confined and maintained for the balance of such school year, in such private school, orphans' home or other similar institution, if there be one, controlled by persons of the same religious faith as the person in parental relation to such child, which is willing and able to receive, confine and maintain such child for a reasonable compensation. Such confinement shall be conducted with a view to the improvement, and to the restoration, as soon as practicable, of such child to the institution elsewhere, upon which he may be lawfully required to attend. The authorities committing any such child and in cities and villages the superintendent of schools therein shall have authority in their discretion to parole at any time any truant so committed by them. Every child suspended from attendance upon instruction by the authorities in charge of furnishing such instruction, for more than one week, shall be required to attend such truant school during the period of such suspension. The school authorities of any city or school district, not having a truant school, may contract with any other city or district having a truant school, for the confinement, maintenance and instruction therein of children whom such school authorities might require to attend a truant school, if there were one in their own city or district. Industrial training shall be furnished in every such truant school. The expense attending the commitment and costs of maintenance of any truant residing in any city or village employing a superintendent of schools shall be a charge against such city or village, and in all other cases shall be a county charge. [*Thus am. by L.* 1896, *ch.* 606, *taking effect May* 13, 1896.]

R. S., 9th ed., pp. 1620-1647. The Excise Law; L. 1892, ch. 403; L. 1892, ch. 402; L. 1887, ch. 679; L. 1877, ch. 419; L. 1873, ch. 646, are repealed by L. 1896, ch. 112, see p. 3498, ante.

R. S., 9th ed., p. 1648. R. S., part 1, ch. 2, titles 2 and 6, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 1667. L. 1882, ch. 108, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 1668. Title V, §§ 15 and 54, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 1674. Title VII, §§ 1, 4-9, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 1675. Title VIII, §§ 1-5, 9, are repealed by L. 1896, ch. 548.

R. S , 9th ed., pp. 1675-1706 to title III, except R. S , part 1, ch. 13, title 6, § 7, are all repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 1706-7. Title III is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 1709-1727, as far as title III, are repealed by L. 1896, ch. 376.

R. S., 9th ed., pp. 1729-51. Chapter 20, title I, is repealed by L. 1896, ch. 225.

R. S., 9th ed., pp. 1751-2. Ch. 20, title III, is repealed by L. 1896, ch. 545.

R. S., 9th ed., pp. 1754-1760, beginning with title VI and ending at title VIII, are repealed by L. 1896, ch. 225.

R. S., 9th ed., pp. 1769-72, beginning with article VI, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 1778, §§ 13, 14 are repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 1781-1842, beginning with chapter I, are repealed by L. 1896, ch. 547, except §§ 5-7 on p. 1783, which are repealed by L. 1896, ch. 272, and except § 63 on p. 1798, which is still unrepealed. But § 1, p. 1830, was amended by L. 1896, ch. 572, which is set out in full in note to § 241 of the Real Property Law, ante, p. 3593.

R. S., 9th ed., pp. 1883-5. R. S., part II, ch. 7, title 1, is repealed by L. 1896, ch. 547.

R. S., 9th ed., pp. 1889-1902, beginning with chap. VIII and ending at part III, are repealed by L. 1896, ch. 272, except § 49, on p. 1894.

R. S., 9th ed., p. 1904. R. S., part III, ch. 1, title 5, §§ 21, 24-5, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 1905. § 231 is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 1900-1.

R. S., 9th ed., pp. 1930, 1933. §§ 29, 33 of R. S., part III, ch. 8, title 16, are amended to read as follows:

§ 29. When the total cost and expense of such repairs or enlargement is ascertained the water commissioner or water commissioners shall make and file in said county clerk's office a detailed statement, giving each item of expense and the date thereof, including the day of the month on which each water commissioner was employed, and the nature of his employment, which statement shall be verified to the effect that it is just and true, and forthwith thereafter the water commissioner or water commissioners shall levy and assess the total cost and expenses of such repairs or enlargement upon the lands originally assessed for the construction of such ditch or channel, and upon the same basis or ratio, and shall make a roll or statement thereof containing a description of each tract or parcel of land assessed, so far as may be required to identify the same, the number of acres assessed in each tract, the name of the owner or owners thereof and their post-office address, or, where the person is not known, or his post-office address can not be ascertained, then the name and post-office address of the occupant thereof and also the amount assessed on each tract or lot. When any assessment shall exceed twenty-five dollars the water commissioner or water commissioners, in his or their discretion, may make it payable in two installments by indicating the same upon such roll, the last installment to be due one year after the first. The roll or assessment shall be verified by the oath of the water commissioner or water commissioners by whom the same is made to the effect that the same is in all respects just and true, and shall be filed in the office of the clerk of the county or counties in which said ditch or channel or any part thereof is located. The said water commissioner or water commissioners shall give notice of such assessment and of the filing thereof to each person whose lands are assessed by them to pay any part of said sum, and also to the president of any village or to the chairman of the board of supervisors in the county that may be assessed by them. Such notice shall be given in the manner prescribed for giving notice of assessment provided in section two of this act. Appeals from any such assessment may be made by any person deeming himself aggrieved thereby, or by any such officer deeming his village or

town or county aggrieved, in the same manner as is provided for appeals under similar assessments in section ten of this act, and the provision of said section ten in regard to appeals from assessments and the procedure thereof shall govern and control the parties and proceedings in all appeals that may be taken from assessments made under this section. The assessment made thereby, or such modification thereof as shall be made upon any appeal taken therefrom shall become a lien upon the several lots or tracts of land on which the same shall be assessed as of the date of such filing, and shall be forthwith collected by the collector of the town or towns in which the same shall be situated. Provided that in case where any such ditch or channel has been kept open and cleaned to its full width and depth as originally laid out, by the owners of the land through or across which it was constructed, at their own expense, such lands shall be exempt from such proportion of the tax or assessment for any repairs or enlargement of such ditch or channel as shall be equal to the cost or expense of so having kept the same open and cleaned, to be fixed and determined by said water commissioner or water commissioners and the tax or assessment on any such lands shall be lessened accordingly. [*Added by L.* 1890, *ch.* 557, *and thus am. by L.* 1892, *ch.* 321; *L.* 1896, *ch.* 819, *taking effect May* 21, 1896.]

§ 33. In case any repairs, alterations or enlargement has been made, or proceedings have been taken for the making of any such repairs, alterations or enlargement of any ditch or ditches or other channels for the free passage of water under this act, or for the making or collecting of any assessment to defray the expense thereof prior to the passage of this amendment such assessment or collection thereof shall not be affected hereby; But the water commissioner or water commissioners having jurisdiction of such proceedings shall cause notice of such assessment, written or printed, to be given to the person whose land is assessed by them to pay any part of said sum, and also to the supervisor of the town or the president of any village or chairman of the board of supervisor* of any county that may be assessed by them, of such assessment, which notice shall state the time and place of filing of the detailed statement of such assessment, which notice shall be served in the manner prescribed for giving

* So in the original.

R. S., 9th ed., pp. 1933-6.

notices of assessment provided for in section ten of this act. Any person feeling aggrieved by such assessment may appeal therefrom in the manner and to the court and within the time prescribed in section ten of this act; and all provisions of said section ten in regard to appeals from an assessment shall govern and control the proceedings upon such appeals. And if any proceedings have been heretofore taken under the provisions of this act for the repairing, altering or enlarging any such ditches or drains, and no assessment has been made or levied to defray the expenses thereof the water commissioner or water commissioners of their respective towns, or their successors in office shall proceed to make and levy such assessment and give notice thereof in the manner and form provided for levying assessments and giving notice thereof provided in section ten of this act. If any water commissioner or water commissioners shall have heretofore levied an assessment for repairs, alterations or enlargement of any such ditches or drains and such assessment shall for any reason be, or be adjudged void by a court of competent jurisdiction the water commissioner or water commissioners having jurisdiction or authority over such ditches or drains shall have power to make a new assessment for the purpose of paying the expenses of said proceedings, which assessments shall be made and notice given thereof as provided in section ten of this act, and any person feeling aggrieved by any such assessment made as provided for in this act may appeal therefrom in the way and manner provided for appeals from assessments in section ten of this act; and the provisions of said section ten shall apply and control the parties and proceedings on all such appeals. And if any new assessment or assessments shall be made in any case as provided in this section the sums that have been paid to any person in respect of any land assessable under this act for or toward paying such void assessments upon such lands shall be credited upon the amounts chargeable upon said lands in any new assessment. [*Added by L.* 1890, *ch.* 557, *and thus am. by L.* 1892, *ch.* 321; *L.* 1896, *ch.* 819, *taking effect May* 21, 1896.]

R. S., 9th ed., p. 1934. §§ 28-30 of R. S., part III, ch. 8, title 17, are repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 1935-6, beginning with "In the court," are repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 1937-9, 1969.

R. S., 9th ed., pp. 1937-9. §§ 1, 5, 10 of part IV, ch. 2, title 4, are amended to read as follows:

§ 1. The supervisors of the several counties of this state, except the city and county of New York, at their annual meetings in each year, shall prepare a list of the names of three hundred persons, to serve as grand jurors at the terms of the supreme court and county courts, to be held in their respective counties during the then ensuing year and until new lists shall be returned. [*Thus am. by L.* 1896, *ch.* 574, *taking effect May* 12, 1896.]

§ 5. The lists so made out by the said boards of supervisors shall contain the christian and surnames, at length, of the persons named therein, their respective places of residence, and their several occupations; it shall be certified by the clerk of the board of supervisors and shall be filed in the office of the clerk of the county on or before the tenth day of December in each year. [*Thus am. by L.* 1896, *ch.* 34, *taking effect February* 21, 1896.]

§ 10. At the time of drawing the names of jurors for the trial of issues of fact, in any term of the supreme court or county court, and at the time of drawing such jurors for the general session† in the city of New York, the county clerk, in the presence and with the assistance of the sheriff or under sheriff, and of the county judge or, in case of his absence or illness, of the special county judge, or, in a county where there is no special county judge, of the surrogate or of a justice of the supreme court residing in such county, who shall have attended for the purpose of drawing the trial jury for such court, shall proceed and draw in and for the city of New York the names of thirty-six persons, and in every other county the names of twenty-four persons, from the box in which the pieces of paper shall have been deposited for that purpose, to serve as grand jurors at such term of the supreme court, or county court, or general sessions, as the case may be. [*Thus am. by L.* 1841, *ch.* 332; *L.* 1896, *ch.* 574, *taking effect May* 12, 1896.]

R. S., 9th ed., pp. 1969-1977. §§ 97-109, 112, 114, 116 of R. S., part IV, ch. 3, title 2, are amended to read as follows:

§ 97.* The superintendent of state prisons shall not, nor shall any other authority whatsoever, make any contract by which

† So in the original.

* §§ 97-109 thus amended by L. 1889, ch. 382, and L. 1896, ch. 429, taking effect Jan. 1, 1897.

R. S. 9th ed., p. 1970.

the labor or time of any prisoner in any state prison, reformatory, penitentiary or jail in this state, or the product or profit of his work, shall be contracted, let, farmed out, given or sold to any person, firm, association or corporation; except that the convicts in said penal institutions may work for, and the products of their labor may be disposed of, to the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state, or any political division thereof.

§ 98.* The superintendent of state prisons, the superintendents, managers and officials of all reformatories and penitentiaries in the state, shall, so far as practicable, cause all the prisoners in said institutions, who are physically capable thereof, to be employed at hard labor, for not to exceed eight hours of each day, other than Sundays and public holidays, but such hard labor shall be either for the purpose of production of supplies for said institutions, or for the state, or any political division thereof, or for any public institution owned or managed and controlled by the state, or any political division thereof; or for the purpose of industrial training and instruction, or partly for one, and partly for the other of such purposes.

§ 99.* The labor of the prisoners of the first grade in each of said prisons, reformatories and penitentiaries, shall be directed with reference to fitting the prisoner to maintain himself by honest industry after his discharge from imprisonment, as the primary or sole object of such labor, and such prisoners of the first grade may be so employed at hard labor for industrial training and instruction solely, even though no useful or salable products result from their labor, but only in case of such industrial training or instruction can be more effectively given in such manner. Otherwise, and so far as is consistent with the primary object of the labor of prisoners of the first grade as aforesaid, the labor of such prisoners shall be so directed as to produce the greatest amount of useful products, articles and supplies needed and used in the said institutions, and in the buildings and offices of the state, or those of any political division thereof, or in any public institution owned or managed and controlled by the state or any political division thereof, or said labor may be for the state, or any political division thereof.

* §§ 97–109 thus amended by L. 1869, ch. 382, and L. 1896, ch. 429, taking effect Jan. 1, 1897.

R. S., 9th ed., pp. 1970–1.

§ 100.* The labor of prisoners of the second grade in said prisons, reformatories and penitentiaries shall be directed primarily to labor for the state or any political division thereof, or to the production and manufacture of useful articles and supplies for said institutions, or for any public institution owned or managed and controlled by the state, or any political division thereof.

§ 101.* The labor of prisoners of the third grade shall be directed to such exercise as shall tend to the preservation of health, or they shall be employed in labor for the state, or a political division thereof, or in the manufacture of such useful articles and supplies as are needed and used in the said institutions, and in the public institutions owned or managed and controlled by the state, or any political division thereof.

§ 102.* All convicts sentenced to state prisons, reformatories and penitentiaries in the state, shall be employed for the state, or a political division thereof, or in productive industries for the benefit of the state, or the political divisions thereof, or for the use of public institutions owned or managed and controlled by the state, or the political divisions thereof, which shall be under rules and regulations for the distribution and diversification thereof, to be established by the state commission of prisons.

§ 103.* The labor of the convicts in the state prisons and reformatories in the state, after the necessary labor for and manufacture of all needed supplies, for said institutions, shall be primarily devoted to the state and the public buildings and institutions thereof, and the manufacture of supplies for the state, and public institutions thereof, and secondly to the political divisions of the state, and public institutions thereof; and the labor of the convicts in the penitentiaries, after the necessary labor for and manufacture of all needed supplies for the same, shall be primarily devoted to the counties, respectively, in which said penitentiaries are located, and the towns, cities and villages therein, and to the manufacture of supplies for the public institutions of the counties, or the political divisions thereof, and secondly to the state and the public institutions thereof.

§ 104.* It shall be the duty of the superintendent of state prisons to distribute, among the penal institutions under his

* §§ 97–100 thus amended by L. 1889, ch. 382, and L. 1896, ch. 429, taking effect Jan. 1, 1897.

R. S., 9th ed., p. 1971.

jurisdiction, the labor and industries assigned by the commission to said institutions, due regard being had to the location and convenience of the prisons, and of the other institutions to be supplied, the machinery now therein, and the number of prisoners, in order to secure the best service and distribution of the labor, and to employ the prisoners, so far as practicable, in occupations in which they will be most likely to obtain employment after their discharge from imprisonment; to change or dispose of the present plants and machinery in said institutions now used in industries which shall be discontinued, and which can not be used in the industries hereafter to be carried on in said prisons, due effort to be made by full notice to probable purchasers, in case of sales of industries or machinery, to obtain the best price possible for the property sold, and good will of the business to be discontinued. The superintendent of state prisons shall annually cause to be procured and transmitted to the legislature, with his annual report a statement showing in detail, the amount and quantity of each of the various articles manufactured in the several penal institutions under his control and the labor performed by convicts therein, and of the disposition thereof.

§ 105.* The superintendent of state prisons, and the superintendents of reformatories and penitentiaries, respectively, are authorized and directed to cause to be manufactured by the convicts in the prisons, reformatories and penitentiaries, such articles as are needed and used therein, and also such as are required by the state or political divisions thereof, and in the buildings, offices and public institutions owned or managed and controlled by the state, including articles and materials to be used in the erection of the buildings. All such articles manufactured in the state prisons, reformatories and penitentiaries, and not required for use therein, may be furnished to the state, or to any political division thereof, or for or to any public institution owned or managed and controlled by the state, or any political division thereof, at and for such prices as shall be fixed and determined as hereinafter provided, upon the requisitions of the proper officials, trustees or managers thereof. No articles so manufactured shall be purchased from any other source, for the

* §§ 97-109 thus amended by L. 1889, ch. 382, and L. 1896, ch. 439, taking effect Jan. 1, 1897.

state or public institutions of the state, or the political divisions thereof, unless said state commission of prisons shall certify that the same can not be furnished upon such requisition, and no claim therefor shall be audited or paid without such certificate.

§ 106.* On or before October first in each year, the proper officials of the state, and the political divisions thereof, and of the institutions of the state, or political divisions thereof, shall report to the said commission of prisons estimates for the ensuing year of the amount of supplies of different kinds required to be purchased by them that can be furnished by the penal institutions in the state. The said commission is authorized to make regulations for said reports, to provide for the manner in which requisitions shall be made for supplies, and to provide for the proper diversification of the industries in said penal institutions.

§ 107.* The comptroller, the state commission of prisons and the superintendent of state prisons and the lunacy commission shall fix and determine the prices at which all labor performed, and all articles manufactured and furnished to the state, or the political divisions thereof, or to the public institutions thereof, shall be furnished, which prices shall be uniform to all, except that the prices for goods or labor furnished by the penitentiaries, to or for the county in which they are located, or the political divisions thereof, shall be fixed by the board of supervisors of such counties, except New York and Kings counties, in which the prices shall be fixed by the commissioners of charities and correction, respectively. The prices shall be as near the usual market price for such labor and supplies as possible. The state commission of prisons shall devise and furnish to all such institutions a proper form for such requisition and the comptroller shall devise and furnish a proper system of accounts to be kept for all such transactions.

§ 108.* Every prisoner confined in the state prisons, reformatories and penitentiaries, who shall become entitled to a diminution of his term of sentence by good conduct, may, in the discretion of the agent and warden, or of the superintendent of the reformatory, or superintendent of the penitentiary, receive compensation from the earnings of the prison or reformatory or penitentiary in which he is confined, such compensation to be graded

* §§ 97-109 thus amended by L. 1889, ch. 382, and L. 1896, ch. 429, taking effect Jan. 1, 1897.

R. S., 9th ed., pp. 1978, 1975.

by the agent and warden of the prison for the prisoners therein, and the superintendent of the reformatory and penitentiary, for the prisoners therein, for the time such prisoner may work, but in no case shall the compensation allowed to such convicts exceed in amount ten per centum of the earnings of the prison or reformatory or penitentiary in which they are confined. The difference in the rate of compensation shall be based both on the pecuniary value of the work performed, and also on the willingness, industry and good conduct of such prisoner; provided, that whenever any prisoner shall forfeit his good time for misconduct or violation of the rules or regulations of the prison, reformatory or penitentiary, he shall forfeit out of the compensation allowed under this section fifty cents for each day of good time so forfeited, and provided, that prisoners serving life sentences shall be entitled to the benefit of this section when their conduct is such as would entitle other prisoners to a diminution of sentence, subject to forfeiture of good time for misconduct as herein provided. The agent and warden of each prison, or the superintendent of the reformatory or superintendent of the penitentiary may institute and maintain a uniform system of fines, to be imposed at his discretion, in place of his other penalties and punishments, to be deducted from such compensation standing to the credit of any prisoner, for misconduct by such prisoner.

§ 109.* All moneys received for fines under this act, from prisons and reformatories, shall be credited to a general fund, and be disbursed by direction of the superintendent of prisons, for special aid to discharge prisoners who are infirm, indigent, or in any way incapable to an unusual degree, of earning a sufficient subsistence after their release, and all moneys received for fines imposed under this act by the superintendents of penitentiaries, shall be credited to a general fund and be disbursed by direction of the board of supervisors of the counties in which they are located, except that in the counties of New York and Kings they shall be disbursed by direction of the commissioners of charities and corrections.

§ 112.* Such agent and warden shall also on the first day of each month, make an estimate and detailed statement of all materials, machinery, fixtures, tools or other appurtenances or

* §§ 97–109, 113, 114, 116 thus amended by L. 1889, ch. 393, and L. 1896, ch. 429, taking effect Jan 1, 1897.

R. S., 9th ed., pp. 1976–7.

accommodations, and of the cost thereof, which will, in his judgment, be necessary for carrying on the labor of the prisoners at such prison, both for the purposes of production, and of industrial training and education, for the next ensuing month, or which, in his judgment, should be contracted for during such month, which estimate shall be forwarded to the superintendent of state prisons, who may revise the same by reducing the amount thereof, and he shall certify that he has carefully examined the same, and that the articles contained in said estimate or in said estimates are† so revised by him, are actually required for the use of the prison, and he shall thereupon deliver the said estimate so certified to the comptroller.

§ 114.* The agent and warden of each prison shall make purchases of the articles included in the estimate so certified to the comptroller, as directed in section one hundred and thirteen, and it shall not be lawful for such agent and warden to make any purchases and contracts on behalf of the state for the industrial purposes of such prison, unless such purchases and contracts shall have been included in such estimate filed with the comptroller.

§ 116.* It shall not be lawful for the superintendent of state prisons, or the agents and wardens, or managers or superintendents of any of the penal institutions in this state, to hereafter receive or permit to be received therein, any prisoner convicted in the United States courts, held without the state of New York, or in any state other than that of the state of New York. It shall be lawful for the agents and wardens of the state prisons, and the managers of the reformatories of the state to receive prisoners convicted and sentenced in the United States courts in this state, for one year or more, upon proper contracts made for their care and custody, to be approved by the superintendent of state prisons; but no prisoners sentenced in United States courts in this state, for one year or more, shall be received in any penal institution in this state, except in the state prisons and reformatories as aforesaid. [*Added by L.* 1890, *ch.* 395, *and thus am. by L.* 1892, *ch.* 130; *L.* 1896, *ch.* 429, *taking effect January* 1, 1897.]

† So in the original.

* §§ 97–109, 112, 114, 116 thus amended by L. 1889, ch. 388, and L. 1896, ch. 429, taking effect Jan. 1, 1897.

R. S., 9th ed., pp. 1982-2014.

R. S., 9th ed., pp. 1982-5, inclusive, beginning with L. 1798, ch. 72, are repealed, except L. 1801, ch. 189, by L. 1896, ch. 547.

R. S., 9th ed., p. 1986. L. 1808, ch. 175, is repealed by L. 1896, ch. 547.

R. S., 9th ed., p. 1989. L. 1836, ch. 532, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 1995. L. 1819, ch. 25, is repealed by L. 1896, ch. 547.

R. S., 9th ed., p. 1999. L. 1828 (2d session), ch. 6, is repealed by L. 1896, ch. 225.

R. S., 9th ed., p. 2003. L. 1828, ch. 137, and L. 1829, ch. 222, are repealed by L. 1896, chs. 548, 547, respectively.

R. S , 9th ed.. p. 2006. L. 1829, ch. 297, and L. 1830, ch. 171, are repealed by L. 1896, chs. 376, 547, respectively.

R. S., 9th ed., p. 2008. L. 1830, ch. 259, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2009-10. L. 1831, chs. 203, § 4, and 277, are repealed by L. 1896, chs. 548 and 225, respectively.

R. S., 9th ed., p. 2010. L. 1831, ch. 315, is repealed by L. 1896, ch. 376.

R. S., 9th ed., p. 2011. L. 1832, ch. 26, is repealed by L. 1896, ch. 225.

R. S., 9th ed., p. 2012. L. 1832, ch. 246, and L. 1833, ch. 56, §§ 1-3, 5-7, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2013. L. 1833, ch. 261, is repealed by L. 1896, ch. 376.

R. S., 9th ed., p. 2014. L. 1833, ch. 279, § 3, is amended to read as follows:

§ 3. Every mortgage filed in pursuance of this act shall cease to be valid as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of each and every term of one year after the filing of such mortgage, a statement describing such mortgage, stating the names of the parties, the time when and the place where filed, and exhibiting the interest of the mortgagee in the property thereby claimed by him by virtue thereof, shall be again filed in the office of the clerk or register aforesaid of the town or city where the mortgagor shall then reside, if he is then a resident of the town or city where the mortgage or a copy thereof was last filed; if not such resident, but a resident of the state, a true copy of such mortgage, to-

gether with such statement, shall be filed in the office of the clerk or register aforesaid of the town or city where he shall then reside, and if not a resident of the state, then such statement shall be filed in the office of the clerk or register of the town or city where the property so mortgaged was at the time of the execution of such mortgage. [*Thus am. by L.* 1873, *ch.* 501; *L.* 1879, *ch.* 418; *L.* 1895, *ch.* 354; *L.* 1896, *ch.* 528, *taking effect May* 11, 1896.]

R. S., 9th ed., p. 2016. L. 1834, chs. 78 and 236, are repealed by L. 1896, chs. 548 and 225, respectively. L. 1835, ch. 11, is repealed by L. 1896, ch. 908. L. 1835, chs. 45 and 123, § 1, are repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2017-8. L. 1835, ch. 272, is repealed by L. 1896, chs. 112 and 548.

R. S., 9th ed., p. 2018. L. 1835, chs. 275, 282, and 299, are repealed by L. 1896, chs. 547, 376, and 548, respectively.

R. S., 9th ed., pp. 2019-20. L. 1836, chs. 384 and 461, are repealed by L. 1896, chs. 548 and 908, respectively.

R. S., 9th ed., p. 2020. L. 1836, ch. 475, is repealed by L. 1896, ch. 376.

R. S., 9th ed., p. 2021. L. 1836, ch. 532, § 3, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2052. L. 1838, chs. 52 and 202, are repealed by L. 1896, chs. 376 and 225, respectively.

R. S., 9th ed., p. 2054. L. 1839, ch. 295, § 5, is repealed by L. 1896, ch. 547.

R. S., 9th ed., p. 2055. L. 1839, ch. 375, and L. 1840, ch. 21, are repealed by L. 1896, ch. 548; L. 1840, ch. 80, is repealed by L. 1896, ch. 272.

R. S., 9th ed., p. 2062. L. 1841, chs. 221 and 223, are repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2063-4. L. 1841, ch. 341, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2064-5. L. 1842, ch. 154, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2065. L. 1842, chs. 157, § 3, and 214, are repealed by L. 1896, chs. 112 and 225, respectively.

R. S., 9th ed., pp. 2066-7. L. 1842, ch. 318, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2068-9. L. 1843, chs. 57 and 87, are repealed by L. 1896, chs. 548 and 547, respectively.

R. S., 9th ed., p. 2070. L. 1843, chs. 199, 202, 205, and § 5 of 210, are repealed by L. 1896, chs. 547, 376, 548 and 547, respectively.

R. S., 9th ed., pp. 2071-2108.

R. S., 9th ed., p. 2071. L. 1844, ch. 255, §§ 2, 4 and 8, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2072. L. 1845, chs. 11 and 85, are repealed by L. 1896, chs. 272 and 548, respectively; L. 1845, chs. 109 and 110, are repealed by L. 1896, ch. 547.

R. S., 9th ed., pp. 2073-6, inclusive, are repealed by L. 1896, ch. 547.

R. S., 9th ed., pp. 2078-9. L. 1845, ch. 180, §§ 22, 28, are repealed by L. 1896, ch. 548, and § § 29-32, by L. 1896, ch. 903.

R. S., 9th ed., pp. 2079-81. L. 1845, ch. 334, is repealed by L. 1896, ch. 225.

R. S., 9th ed., p. 2081. L. 1846, chs. 245 and 62, are repealed by L. 1896, chs. 225 and 376, respectively.

R. S., 9th ed., pp. 2082-3. L. 1846, ch. 143, is repealed by L. 1896, ch. 546.

R. S., 9th ed., p. 2085. L. 1871, ch. 110, is repealed by L. 1896, ch. 908; and L. 1846, ch. 189, which the act of 1871 amends, is also, by Statutory Construction Law, § 31, p. 117, ante, repealed by the same act.

R. S., 9th ed., p. 2085. L. 1846, ch. 245, is repealed by L. 1896, ch. 225.

R. S., 9th ed., pp. 2085-8. L. 1846, ch. 327, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2088. L. 1847, ch. 69, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2090. L. 1847, ch. 170, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2095. L. 1847, ch. 276, § § 1-7, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2100. L. 1847, ch. 455, §§ 17, 19, 25, and 26 are repealed by L. 1896, ch. 548; § 16, by L. 1896, ch. 908.

R. S., 9th ed., pp. 2100-1. L. 1847, ch. 470, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2102. L. 1848, ch. 72, §§ 1 and 2, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2103. L. 1848, ch. 176, is repealed by L. 1896, ch. 225.

R. S., 9th ed., pp. 2103-4. L. 1848, ch. 188, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2104. L. 1848, ch. 195, is repealed by L. 1896, ch. 547.

R. S., 9th ed., pp. 2104-6, beginning with L. 1848, ch. 200, are repealed by L. 1896, ch. 272.

R. S., 9th ed., p. 2108. L. 1848, ch. 321, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2109-85.

R. S., 9th ed., p. 2109. L. 1849, chs. 124 and 125, §§ 20-1, are repealed by L. 1896, ch. 548; L. 1849, ch. 180, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2112. L. 1849, chs. 372 and 399, are repealed by L. 1896, ch. 376; and L. 1849, ch. 375, by L. 1896, ch. 272.

R. S., 9th ed., p. 2113. L. 1850, ch. 24, is repealed by L. 1896, ch. 546.

R. S., 9th ed., p. 2115. L. 1850, ch. 155, and L. 1851, ch. 52, are repealed by L. 1896, ch. 548; L. 1850, ch. 307, is repealed by L. 1896, ch. 376.

R. S., 9th ed., pp. 2115-20. L. 1851, ch. 134, except § 33, is repealed by L. 1896, ch. 376; L. 1835, ch. 282, on p. 2117, is repealed by the same act.

R. S., 9th ed., pp. 2120-1. L. 1851, ch. 163, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2121-2. L. 1851, ch. 176, is repealed by L. 1896, ch. 908; and L. 1851, ch. 217, by L. 1896, ch. 548.

R. S., 9th ed., p. 2123. L. 1851, ch. 321, is repealed by L. 1896, ch. 272.

R. S., 9th ed., pp. 2123-5. L. 1851, ch. 371, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2125-6. L. 1851, ch. 488, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2126. L. 1851, chs. 502 and 532, are repealed by L. 1896, chs. 546 and 225, respectively; and L. 1852, ch. 46, by L. 1896, chs. 548 and 908.

R. S., 9th ed., pp. 2127-8. L. 1852, ch. 282, is repealed by L. 1896, chs. 548 and 908. L. 1852, ch. 387, is repealed by L. 1896, ch. 546.

R. S., 9th ed., pp. 2129-30. L. 1853, ch. 69, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2130. L. 1853, chs. 142, § § 1 and 2, 159 and 218, are repealed by L. 1896, chs. 548, 546, and 548, respectively.

R. S., 9th ed., p. 2131. L. 1853, ch. 338, § 4, is repealed by L. 1896, ch. 548; L. 1853, ch. 406, by L. 1896, chs. 548 and 908; L. 1853, ch. 467, by L. 1896, ch. 548.

R. S., 9th ed., pp. 2131-2. L. 1853, ch. 469, and L. 1855, ch. 83, are repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2132. L. 1853, chs. 498 and 619, are repealed by L. 1896, ch. 548. L. 1853, ch. 576, is repealed by L. 1896, ch. 272. L. 1853, ch. 608, is repealed by L. 1896, ch. 546.

R. S., 9th ed., p. 2133. L. 1854, ch. 188, is repealed by L. 1896, chs. 225 and 548; L. 1854, ch. 198, by L. 1896, ch. 548.

R. S., 9th ed., p. 2135. L. 1854, ch. 326, is repealed by L. 1896, ch. 376.

R. S., 9th ed., pp. 2136–47.

R. S., 9th ed., pp. 2136-7. L. 1854, ch. 393, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2138. L. 1855, chs. 37 and 64, are repealed by L. 1896, chs. 908 and 548, respectively.

R. S., 9th ed., p. 2139. L. 1855, ch. 83, is repealed by L. 1896, ch. 908; L. 1855, ch. 163, by L. 1896, ch. 546; L. 1855, ch. 269, by L. 1896, chs. 548 and 225.

R. S., 9th ed., pp. 2139-41. L. 1855, ch. 327, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2143-53. L. 1855, ch. 427, is repealed by L. 1896, ch. 908; but § 19 is amended by L. 1896, ch. 951, and as amended is probably to be considered an enactment subsequent to L. 1896, ch. 908 (The Tax Law), by § 33 of The Statutory Construction Law, ante, p. 119; § 19, as amended, reads as follows:

§ 19. Whenever the comptroller shall have rejected any tax in the first instance, or have cancelled and charged the same to the county to which it had previously been credited, the supervisor of the town or ward in which such lands are situate, shall, if in his power, add to the assessment roll of such town or ward for the year during which such transcript shall have been forwarded by the comptroller to the county treasurer, an accurate description of such lands and the correct amount of taxes thereon, stating the tax of each year and each kind of tax, separately, and shall furnish the comptroller with all such maps and surveys of such lands as shall have been required by him; and, if necessary, he may cause a survey and map of each lot or parcel returned for more perfect description to be made and the expense of such survey and map shall be a charge upon such land to be added to the tax thereon, the board of supervisors shall direct the collection of such taxes and the expenses so added to such assessment-roll, and they shall, for all the purposes of this act, be considered as taxes of the year in which the description shall be perfected. If the supervisor of such town or ward shall not have fully complied with the requirements of this section, the comptroller shall not thereafter admit, but shall reject all such reassessed, cancelled or rejected taxes as may be returned to him. Whenever any tax has been rejected by the comptroller and returned to the county to which it had previously been credited, the board of supervisors of such county or if there be no board of supervisors of such county, then the board of aldermen performing the duties of supervisors, shall direct that such

rejected tax be cancelled upon the tax-roll in the office of the treasurer of the county, for the year or years for which it was levied. [*Thus am. by L.* 1878, *ch.* 152; *L.* 1896, *ch.* 951, *taking effect May* 28, 1896.]

R. S., 9th ed., p. 2155. L. 1855, chs. 547 and 556, are repealed by L. 1896, chs. 547 and 548, respectively.

R. S., 9th ed., p. 2156. L. 1856, ch. 183; L. 1857, ch. 7, are repealed by L. 1896, ch. 908, and L. 1857, ch. 243, by L. 1896, ch. 548.

R. S., 9th ed., p. 2157. L. 1857, chs. 267 and 367, are repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2159-60. L. 1857, chs. 456 and 482, are repealed by L. 1896, chs. 908 and 548, respectively.

R. S., 9th ed., pp. 2162-3. L. 1857, chs. 560, 564, 576 and 585, are repealed by L. 1896, chs. 376, 548, 547 and 908, respectively.

R. S., 9th ed., p. 2163. L. 1857, ch. 615, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2164-5. L. 1858, ch. 187; L. 1873, ch. 821; and L. 1879, ch. 248, are repealed by L. 1896, ch. 272.

R. S., 9th ed., p. 2166. L. 1858, chs. 259 and 261, are repealed by L. 1896, chs. 547 and 548, respectively.

R. S., 9th ed., p. 2167. L. 1858, ch. 357, and L. 1859, ch. 170, are repealed by L. 1896, chs. 908 and 548, respectively.

R. S., 9th ed., pp. 2171-5, inclusive, beginning at L. 1859, ch. 312, are repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2177. L. 1860, ch. 90, is repealed by L. 1896, ch. 272.

R. S., 9th ed., pp. 2178-9. L. 1860, chs. 155, 254 and 345, are repealed by L. 1896, chs. 376, 547 and 548, respectively.

R. S., 9th ed., p. 2179. L. 1860, chs. 396 and 522, §§ 1 and 2, are repealed by L. 1896, chs. 547 and 548, respectively.

R. S., 9th ed., pp. 2181-2. L. 1861, ch. 306, is repealed by L. 1896, ch. 546.

R. S., 9th ed., p. 2182. L. 1861, ch. 307, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2183. L. 1862, ch. 172, is repealed by L. 1896, ch. 272; L. 1862, ch. 178, and L. 1875, ch. 573, by L. 1896, ch. 376; L. 1862, ch. 194, by L. 1896, ch. 908.

R. S., 9th ed., pp. 2184-91. L. 1862, ch. 220, is repealed by L. 1896, ch. 546.

R. S., 9th ed., pp. 2194-5. L. 1862, ch. 473, is repealed by L. 1896, ch. 225.

R. S., 9th ed., p. 2206. L. 1863, ch. 246, is repealed by L. 1896, ch. 547.

R. S., 9th ed., pp. 2208-2224.

R. S.,9th ed., p. 2208. L. 1863, ch. 412, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2209. L. 1863, ch. 456, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2213-5. L. 1864, chs. 131 and 276, are repealed by L. 1896, ch. 376.

R. S., 9th ed., pp. 2215-6. L. 1864, chs. 387 and 591, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2218. L. 1864, ch. 583; and L. 1865, chs. 137 and 170, § 6, are repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2219-20. L. 1865, ch. 295, is repealed by L. 1896, ch. 376.

R. S., 9th ed., p. 2220. L. 1865, ch. 296, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2221-2. L. 1865, ch. 453, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2224-5. L. 1865, ch. 585, § 2, is amended to read as follows:

§ 2. The board of trustees of said Cornell university shall hereafter be made up and constituted as follows: The governor, the lieutenant-governor, the speaker of the house of assembly, the superintendent of public instruction, the president of the State Agricultural society, the commissioner of agriculture, the librarian of the Cornell library, and the president of the said university, shall be trustees thereof ex officio, and the eldest lineal male descendant of Ezra Cornell shall be a trustee thereof during his life. There shall also be thirty elective trustees twenty of whom shall be elected by the board of trustees, and ten by the alumni of said university; but at no time shall a majority of the board be of any one religious sect or of no religious sect. The fifteen members now constituting the elective members of the present board of trustees of said university shall continue to act as such until the expiration of their respective terms of office. At the first commencement following the passage of this act the present board of trustees shall elect two trustees for a full term of five years each, and at the same time, or at any meeting of the board during the next academic year, the board of trustees shall elect ten additional trustees, two of whom shall serve for one year; two for two years; two for three years; two for four years; and two for five years; their respective terms being determined by lot under the direction of the board of trustees. And thereafter the

board of trustees shall elect each year four trustees, and as many more as may be necessary to fill vacancies, among members elected by them caused by resignation or death. The alumni of said university shall meet annually at Ithaca, New York, on the day before commencement, and at the meeting held at the first commencement following the passage of this act the said alumni shall elect one trustee to serve for a full term of five years, the candidates therefor to be designated as candidates for a "full term," if nominations are made, and shall be so designated upon the ballots; and at the same time they shall elect five additional trustees, one for one year; one for two years; one for three years; one for four years; and one for five years; the respective terms of the said additional five trustees to be determined by lot under the direction of the board of trustees, after their election. And thereafter at the meeting of the alumni at each annual commencement said alumni shall elect two trustees, and as many more as may be necessary to fill vacancies arising from resignations or deaths among the number previously elected by them. Except as hereinbefore otherwise provided the term of office of each elective trustee shall be five years from the annual commencement at which he is elected; but if elected by the board of trustees at a meeting thereof during the academic year, his term shall be five years from the commencement immediately preceding his election; but every trustee shall hold over until his successor is elected. The election of trustees by the board shall be by ballot, and fifteen ballots shall concur before any one is elected; and twelve shall constitute a quorum for the transaction of business. Who shall be alumni of said university shall be prescribed by its board of trustees. The election of trustees by the alumni shall be by ballot, and shall be conducted in the following manner and under the following provisions: A register of the signature and address of each of the said alumni of the said university shall be kept by the treasurer of the said university at his business office. Any ten or more alumni may file with the treasurer, on or before the first day of April in each year, written nominations of the trustee or trustees to be elected by the alumni at the next commencement. Forthwith after such first day of April a list of such candidates shall be mailed by said

R. S., 9th ed., pp. 2225-2245.

treasurer to each of the alumni at his or her address. Each alumnus may vote by transmitted ballot for trustee or trustees to be elected by the alumni at any commencement, in accordance with such regulations as to the method and time of voting as may be prescribed by the alumni and approved by the trustees of the university or its executive committee. The candidates to the extent of the number of places to be filled having the highest number of votes upon the first ballot shall be declared elected, provided that each of said candidates has received the votes of at least one-third of all the alumni voting at said election; but if there shall be a failure to fill all or one or more of the vacancies, caused by expiration of term or otherwise, by reason of the fact that one or more candidates having the highest number of votes as above fail to receive the votes of at least one-third of the alumni voting, then and in that event such vacancies shall be filled by the alumni personally present at said meeting, the election being limited to candidates not elected on the first ballot, if there is a sufficient number thereof, having the highest pluralities, not exceeding two candidates for each place thus to be filled. [*Thus am. by L.* 1895, *ch.* 87; *L.* 1896, *ch.* 238, *taking effect April* 15, 1896.]

R. S., 9th ed., p. 2227. L. 1865, ch. 712, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2228-30. L. 1865, ch. 773, is repealed by L. 1896, ch. 376.

R. S., 9th ed., p. 2230. L. 1866, ch. 95, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2230-4. L. 1866, ch. 317, is repealed by L. 1896, ch. 377.

R. S., 9th ed., p. 2234. L. 1866, ch. 369, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2241. L. 1866, chs. 787 and 783, are repealed by L. 1896, ch. 548; L. 1866, ch. 820, by L. 1896, ch 908.

R. S., 9th ed., pp. 2242-3. L. 1867, ch. 361, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2243-4. L. 1867, ch. 375, § 6, is repealed by L. 1896, ch. 376.

R. S., 9th ed., pp. 2244-5. L. 1867, ch. 694, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2251-2262.

R. S., 9th ed., p. 2251. L. 1867, ch. 951, is repealed by L. 1896, ch. 546.

R. S., 9th ed., pp. 2251-3. L. 1867, ch. 971, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2257. L. 1868, chs. 513 and 793, are repealed by L. 1896, chs. 547 and 548, respectively.

R. S., 9th ed., p. 2258. L. 1868, ch. 857, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2259. L. 1869, ch. 176, is repealed by L 1896, ch. 377; L. 1869, chs. 322 and 361 are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2261. L. 1870, chs. 69 and 86, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2262. L. 1870, chs. 203, § 9, 208 and 277, are repealed by L. 1896, chs. 548, 547 and 272, respectively.

R. S., 9th ed., pp. 2262-3. L. 1870, ch. 291, § 1 of title 1, is amended to read as follows:

§ 1. Any or part of any town or towns not in any incorporated village, containing a resident population of not less than three hundred persons, and, if it shall include in its boundaries a territory of more than one square mile in extent, containing a resident population of not less than three hundred persons in each and every additional square mile of territory included within such boundaries, may be incorporated as a village under the provisions of this act, by complying therewith, provided that any or part of any town or towns not containing three hundred resident population, but including in its boundaries a territory not less than one-half a mile square in extent, and either a park of not less than forty acres used for a summer resort owned by an association incorporated by the state, or a subdivision of not less than one hundred acres, owned and improved, with streets and avenues, by a corporation incorporated by the state to buy and sell land, may be incorporated as a village upon filing in the county clerk's office of the county a map as provided in section two of this title, and a petition signed, where such territory includes a park of not less than forty acres used for a summer resort, by every property owner liable to taxation and by every voter in such territory, and where such territory includes a subdivision of not less than one hundred acres, by property-owners owning more than one-half in taxable values of the real property included within such boundaries, according

R. S., 9th ed., pp. 2262–4.

to the last preceding town assessment-roll, and by two-thirds of the voters in such territory, which such petition shall be duly acknowledged before some officer authorized to administer oaths, in favor of such corporation, and thereafter the town or towns, or portion thereof included in such petition, shall be incorporated as a village under this act by the name designated in such petition, and in any such case and in no other, may proceed to elect village officers at once as provided in section eighteen of this title, and the first three names appearing in such petition shall constitute the first board of inspectors; provided, however, that the provisions of this act relating to subdivisions shall apply only in towns adjoining, at the time of the passage of this act, cities of more than one million and a half population. [*Thus am. by L.* 1871, *chs.* 688, 870; *L.* 1873, *ch.* 92; *L.* 1891, *ch.* 116; *L.* 1896, *ch.* 688, *taking effect May* 15, 1896.]

R. S., 9th ed., p. 2264. L. 1870, ch. 291, § 7 of title 1, is amended to read as follows:

§ 7. After the compliance with the preceding provisions in case of the proposed incorporation of any part of a town or towns, or after a vote in favor of such incorporation of the whole town at a regular or special town meeting of the voters thereof, in case of the proposed incorporation of the whole of such town as a village, a notice shall be prepared, stating that between the hours of one in the afternoon and sunset on a day specified in said notice, at some public place within the bounds of the proposed village, or where the proposed village is of parts of two or more towns, at some public places within the bounds of the parts of such towns as are within the bounds of such proposed village, designating such place or places, such day to be at least five weeks from the time of leaving the survey, map, description of the boundaries and census for examination, as hereinbefore provided, or in case of the proposed incorporation of a whole town, not less than six weeks from the time of posting the notice hereinafter provided, an election will be held to determine whether the proposed territory shall be incorporated as a village. Such notice shall also state the proposed name of said village, set out the verbal description of its bounds, give the amount proposed to be expended the first year of the incorporation for ordinary expenditures, as defined in this act, and may also state the day upon which the

R. S., 9th ed., pp. 2265, 2270.

annual election of elective officers of the corporation after the first election shall be held in each year, and shall be signed by at least fifteen per centum of the electors resident within the bounds of said proposed village liable to be assessed for the ordinary and extraordinary expenditures of such village; or if the territorial limits of such village shall comprise parts of two or more towns, then by a majority of such electors resident in each of the said parts. Such notice so signed shall be published in a newspaper, if there shall be one within the proposed bounds of said village and copies of the same shall be posted in ten public places within said bounds at least thirty days before the day of election specified in said notice. [*Thus am. by L.* 1871, *ch.* 688; *L.* 1883, *ch.* 172; *L.* 1892, *ch.* 194; *L.* 1896, *chs.* 209 *and* 923, *taking effect May* 27, 1896.]

R. S., 9th ed., p. 2265. L. 1870, ch. 291, § 9 of title 1, is amended to read as follows:

§ 9. Every elector resident in such territory and liable to be assessed for the ordinary and extraordinary expenditures of such village, may vote at such meeting by a ballot having thereon the word "Yes" or "No." [*Thus am. by L.* 1896, *ch.* 923, *taking effect May* 27, 1896.]

R. S., 9th ed., p. 2270. L. 1870, ch. 291, § 5 of title 2, is amended to read as follows:

§ 5. All officers elected or appointed under this act, shall hold their respective offices one year, except the trustees, who shall hold their offices for the term for which elected; and the said officers shall so hold for the respective term aforesaid, unless sooner removed or disqualified, and until their successors shall be elected or appointed and qualified; excepting that the board of trustees may, from time to time, appoint police constables for a less term than one year; and in case the board of trustees shall fail for thirty days after the annual election in any year to appoint the officers or any of them as required by this act, then it shall be the duty of the president after the expiration of said thirty days by an appointment in writing, signed by him and filed with the clerk of the village to appoint a qualified person to fill each office for which no appointment has been made for the respective term or terms aforesaid, with like force and effect as if the appointment had been made by the board of trustees

R. S., 9th ed., pp. 2291, 2294.

within the thirty days aforesaid. [*Thus am. by L.* 1874,*ch.* 628; *L.* 1890, *ch.* 82; *L.* 1892 *ch.* 593; *L.* 1896, *ch.* 522, *taking effect May* 11, 1896.]

R. S., 9th ed., p. 2291. L. 1870, ch. 291, § 22 of title 3, is amended to read as follows:

§ 22. Whenever any person owning or occupying lands adjoining a highway within the limits of any village incorporated under the provisions of this act shall, with the consent of the trustees of such village, or a majority of them, grade and flag or construct a stone sidewalk within such highway, along the line of such lands so owned or occupied by him, of the width of four or more feet, it shall be the duty of such trustees to examine the same when finished, and to credit such owner or occupant therefor so much on account of his assessment for highway tax in said village, as such trustees shall deem necessary, to pay not to exceed three-fourths of the actual and necessary expense of constructing such sidewalk, and to deliver to such owner or occupant their certificate of the amount of such credit; but such credit shall in no case be less than three dollars per lineal rod for the amount of said walk so constructed and finished. The trustees may, however, pay from the highway fund for the current year, in cash, to such owner, one-half of the cost of such sidewalk. If said trustees find such walk or walks to be less value than four dollars per lineal rod, then they shall give no credit for the construction of the same. The trustees of such village shall thereafter exempt the owner or occupant of such lands from all highway taxes in said village, till the amount of such exemption shall be equal to the sum of the credit for which said certificate was allowed. [*Added by L.* 1880, *ch.* 292, *and thus am. by L.* 1896, *ch.* 458, *taking effect May* 9, 1896.]

R. S., 9th ed., p. 2294. L. 1870, ch. 291, § 6, of title 4, is amended to read as follows:

§ 6. In addition to the amount raised by the trustees for ordinary expenditures the trustees shall have power, in any one year, in addition to the poll tax, to raise by tax such sum as they may deem necessary, not exceeding in any one year, including the amount borrowed as hereinafter provided, the amount of one per centum on the assessed valuation of such village, to be denominated a highway tax, to work and improve the roads,

R. S., 9th ed., pp. 2294, 2297.

avenues, streets, public squares and parks, lanes, sidewalks, and crosswalks of said village and the alteration and repair thereof, on all persons and incorporated companies owning property and estate, real and personal, in said village, to be assessed and collected as all other taxes are, by the provisions of this act. Provided the trustees shall have the power to provide by resolution to be entered upon the book of record of the village for the raising of money for the building, repair or alteration of sidewalks, in annual installments, the number thereof and the amount of each, to be specified in said resolution, and said trustees may issue certificates of indebtedness, or bonds of the village for the amount of such installments, payable respectively when such installments are to be raised, with interest not exceeding six per centum per annum, and may apply the same or proceeds thereof for the building, repair or alteration of sidewalks. Said certificates or bonds shall be executed by the president of the board of trustees, and the treasurer of said village, unless the same shall be delivered in payment of the expenditures for which they are issued, shall be sold by the trustees of said village to the highest bidder at public sale, notice of which shall be given by publishing the same in a newspaper published in said village at least once a week, for two weeks successively prior to the day of sale, but such certificates or bonds shall not be sold for less than par. The money so raised under this section, with the proceeds of the poll tax, shall be devoted to the purposes for which it was raised as expressed in this section, and kept apart as a separate and distinct fund by the treasurer. [*Thus am. by L.* 1871, *ch.* 870; *L.* 1880, *ch.* 422; *L.* 1896, *ch.* 341, *taking effect April* 21, 1896.]

R. S., 9th ed., p. 2297. L. 1870, ch. 291, § 4 of title 5, is amended to read as follows:

§ 4. The persons appointed police constables shall have the power and be subject to the same duties in criminal and civil cases, cognizable by such justice as constables of towns, one of whom shall be chief of police, and all of whom shall be subject to the directions and orders of the president. They shall have the power and it shall be their duty to keep order in all public places in the village; to arrest persons concerned in riotous or noisy assemblages, or who are breaking the peace, or violating

R. S., 9th ed., pp. 2297, 2303.

this act, or the by-laws, rules or ordinances of the village, and forthwith convey them before the proper authority, to be dealt with according to law, and to keep and retain such persons in custody until committed or discharged. Said police constables shall have power to execute any warrant or process issued by justices of the peace of the county or counties in which such village is situated. The said police constables shall be paid for their services the same compensation as town constables for similar services, which shall be a charge upon the village, and shall be audited and allowed in the same manner as other village charges, except when such police constables shall be allowed an annual salary, fixed by the board of trustees; and the trustees of any village incorporated under this act are hereby authorized to fix and establish by resolution to be entered in their minutes an annual salary to be paid to any police constable elected or appointed under this act, not however to exceed the sum of eight hundred dollars per annum to any such constable, which salary shall be in lieu of any fees to which such police constable might otherwise be entitled. It shall be the duty of police constables in such villages to present to the board of supervisors of the county, in which such village is situated, an account of their fees and compensation in all cases when their services in criminal matters would be a county charge if performed by a constable of a town, and such fee shall be audited and allowed and the payments made therefor to the village paying such police constable his salary. [*Thus am. by L.* 1878, *ch.* 59; *L.* 1885, *ch.* 192; *L.* 1889, *ch.* 229; *L.* 1896, *ch.* 457, *taking effect May* 9, 1896.]

R. S., 9th ed., p. 2303. L. 1870, ch. 291, § 2 of title 7, is amended to read as follows:

§ 2. Whenever any road, avenue, street, square or park, lane or sidewalk is opened or altered, the damages claimed by reason thereof may be determined by agreement, between the board of trustees and the person or persons claiming such damages; but in case the damages are not so determined or released the board shall present a petition to the county court, for the appointment of three commissioners to assess the damages. Upon the presentation of such petition, the county court shall appoint three disinterested freeholders, who shall not be named by any person

interested in the proceedings, who shall be residents of the county, but not of the village wherein such damages are to be assessed, as the commissioners to determine the amount of damages. They shall take the constitutional oath of office and appoint a time and place at which they shall meet to hear the persons interested in the assessment of damages. The board shall cause, at least eight days previous, written or printed notice to be posted in not less than three public places in the village specifying, as near as may be, the street, square or park, avenue, road, lane or sidewalk proposed to be laid out, altered or discontinued, the tracts or parcels of land through which it runs, and the time and place of the meeting of the commissioners. Such notice shall also, in like time, be personally served on the owner or occupant of the land if they reside in the village, or by leaving the same at their residence with a person of mature age, if they do not reside in the same village, or, if service can not be so made, a copy of such notice shall be mailed to such owner and occupant, if their post-office address is known to the board or ascertainable by them upon reasonable inquiry. The commissioners shall personally examine the premises described in the application, and assess the damages occasioned to the owner and occupant by reason of the laying out, extending or widening, any road, avenue, street, square or park, lane or sidewalk. They may adjourn the proceedings from time to time, issue subpoenas and administer oaths; and they shall keep minutes of their proceedings, and shall reduce to writing all evidence given before them. They shall make a certificate of their decision, and shall file it, together with the minutes and evidence, in the office of the village clerk. The commissioners shall determine and award the owner of such land such damages as he will sustain by the proposed alteration or improvement, after making allowance for any benefit which he may derive therefrom. The determination of the commissioners shall be signed by a majority of them and filed in the office of the village clerk, and a certified copy of such award shall forthwith be served by the village clerk on the persons entitled to such award. Within twenty days after the filing of the decision of the commissioners in the office of the village clerk, the board or any other party interested in the proceedings may apply to the court, if in ses-

R. S., 9th ed., pp. 2815-2840.

sion, or to the city judge, for an order confirming, vacating or modifying the decision, and such court or judge may confirm, vacate, or modify such decision. If the decision be vacated, the court or judge may order another hearing of the matter, before the same or different commissioners. If no such motion is made, the decision of the commissioners shall be final and conclusive on all persons interested; a copy of such award, certified by the clerk, under the seal of the village, shall be evidence of the same, in all courts and places, and in all actions and proceedings. The commissioners shall be entitled to receive five dollars for each day necessarily employed in the proceedings, to be paid by the village. [*Thus am. by L.* 1871, *ch.* 870; *L.* 1893, *ch.* 694; *L.* 1896, *ch.* 243, *taking effect April* 15, 1896.]

R. S., 9th ed., pp. 2815-6. L. 1870, ch. 325, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2817. L. 1870, ch. 408, § 15, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2818-9. L. 1870, ch. 424, is repealed by L. 1896, ch. 225.

R. S., 9th ed., p. 2820. L. 1870, ch. 470, §§ 1 and 18, are repealed by L. 1896, ch. 548; L. 1870, ch. 506, §§ 2, 3, 4 and 5, are repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2821. L. 1870, ch. 539, §§ 26-8, and ch. 548, are repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2824. L. 1871, ch. 308, is repealed by L. 1896, ch. 377.

R. S., 9th ed., p. 2825. L. 1871, chs. 576 and 610, are repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2827-9. L. 1871, ch. 934, except last sentence of § 8, is repealed by L. 1896, ch. 272.

R. S., 9th ed., p. 2830. L. 1872, chs. 38 and 120 are repealed by L. 1896, chs. 225 and 547, respectively. L. 1872, ch. 48 is repealed by L. 1896, chs. 225 and 548.

R. S., 9th ed., p. 2831. L. 1872, ch. 141, is repealed by L. 1896, ch. 547; L. 1872, ch. 143, by L. 1896, chs. 112 and 548; L. 1872, ch. 320, by L. 1896, ch. 548; L. 1872, ch. 358, by L. 1896, ch. 547.

R. S., 9th ed., p. 2835. L. 1873, ch. 19, § 4, and L. 1873, ch. 186, § 3, are repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2837-40. L. 1873, ch. 417, is repealed by L. 1896, ch. 377.

R. S., 9th ed., p. 2340. L. 1873, ch. 474, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2341. L. 1873, ch. 571, is repealed by L. 1896, ch. 546.

R. S., 9th ed., p. 2344. L. 1873, ch. 646, is repealed by L. 1896, ch. 112.

R. S., 9th ed., pp. 2344-8. L. 1873, ch. 661, is repealed by L. 1896, ch. 225.

R. S., 9th ed., pp. 2348-51. L. 1873, ch. 830; is repealed by L. 1896, ch. 272.

R. S., 9th ed., p. 2353. L. 1874, chs. 261, 351 and 421, are repealed by L. 1896, chs. 547, 908 and 606, respectively.

R. S., 9th ed., pp. 2353-80, inclusive, beginning at L. 1874, ch. 446, except §§ 21, 22 and 26, on pp. 2360-1, are repealed by L. 1896, ch. 545; the repeal by L. 1896, ch. 545, of L. 1875, ch. 574, which amended § 22, p. 2360, probably revives the original § 22 of L. 1874, ch. 446 (see Statutory Construction Law, § 31, ante, p. 117), which reads as follows:

§ 22. When a person accused of the crime of arson or murder, or attempt at murder, shall have escaped indictment, or shall have been acquitted upon trial upon the ground of insanity, the court, being certified by the jury or otherwise of the fact, shall carefully inquire and ascertain whether the insanity in any degree continues, and if it does, shall order such person into safe custody, and to be sent to one of the state lunatic asylums, or to the state lunatic asylum for insane criminals at Auburn, at the discretion of the court. If any person in confinement under indictment for the crime of arson or murder, or attempt at murder, shall appear to be insane, the county judge of the county where he is confined shall institute a careful investigation, call two or more respectable physicians and other credible witness, invite the district attorney to aid in the examination, and, if it be deemed necessary, call a jury, and for that purpose is fully empowered to compel the attendance of witnesses and jurors; and if it is satisfactorily proved that such person is insane, said judge may discharge such person from imprisonment, and order his safe custody and removal to one of the state lunatic asylums, or to the state lunatic asylum for insane criminals, at the direction of such judge, where such person shall remain until restored to his right mind, and then, if the said judge shall have so directed,

R. S., 9th ed., pp. 2381-2399.

the superintendent of said asylum shall inform the said judge and the district attorney of the county thereof, so that the person so confined may, within sixty days thereafter, be remanded to prison, and criminal proceedings be resumed, or otherwise discharged. If any such person be sent to either of said asylums, the county from which he is sent shall defray all expenses of such person while at the asylum, and the expense of returning him to such county; but the county may recover the amount so paid from his own estate, if he have any, or from any relative, town, city or county that would have been bound by existing laws, to provide for and maintain him elsewhere.

R. S., 9th ed., p. 2381. L. 1874, ch. 656, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2384. L. 1875, ch. 140, is repealed by L. 1896, ch. 225.

R. S., 9th ed., p. 2385. L. 1875, chs. 173 and 175, are repealed by L. 1896, chs. 225 and 376, respectively.

R. S., 9th ed., p. 2399. L. 1875, ch. 181, § 15, is amended to read as follows:

§ 15. The entire annual receipts for water rents, after deducting therefrom such sums as may be necessary to defray the expenses of repairs of said water-works and of extending the same, and other necessary expenses, shall be applied toward the payment of the interest on the loan hereinbefore authorized, and also toward the creation of a sinking fund for the payment of the principal of said loan, as it shall from time to time become due and payable, which sinking fund shall be managed by said commissioners. No investment shall be made in behalf of such sinking fund, except in the bonds of the United States, of the state of New York, or of any city of this state, and in the bonds, certificates or other obligations authorized to be issued by such village under this act, which last-named bonds, certificates and obligations the commissioners may purchase at any time when they shall have funds applicable, at prices not exceeding their par value, and when so purchased said bonds, certificates and obligations shall not be reissued, but shall be immediately canceled. The board of water commissioners of any village is, however, hereby authorized to invest, for the benefit of the said sinking fund, in policies of endowment insurance, in any life in-

surance company incorporated under the laws of this state, and having assets of over five million of dollars, as shown by the last preceding report of the superintendent of the insurance department, to an amount not exceeding the face value of the bonds, issued by said village for water-works and for a term of years ending with the maturity of said bonds. The said commissioners may also, with the approval of the board of trustees in each case, loan said sinking fund on mortgage on improved lands in the same county, owned by the borrower; provided, however, that before they accept a mortgage on lands for any of said moneys they shall be satisfied that the borrower has a title in fee to such lands, and that the same are free and clear of all incumbrances and are worth three times the amount of the sum loaned, exclusive of buildings; and they shall require the borrower to satisfy them, by proper evidence, that he possesses an estate in fee in such lands, free and clear of all incumbrances. [*Thus am. by L.* 1896, *ch.* 310, *taking effect April* 17, 1896.]

R. S., 9th ed., pp. 2405-6. L. 1875, ch. 228, is repealed by L. 1896, ch. 546.

R. S., 9th ed., p. 2406. L. 1875, ch. 249, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2407. L. 1875, chs. 331 and 336, are repealed by L. 1896, chs. 908 and 547, respectively.

R. S., 9th ed., p. 2408. L. 1875, ch. 378, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2410. L. 1875, ch. 466, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2414. L. 1875, ch. 573, is repealed by L. 1896, ch. 376.

R. S., 9th ed., pp. 2421-2. L. 1876, ch. 49, and L. 1874, ch. 351, are repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2423. L. 1876, chs. 121 and 295, are repealed by L. 1896, chs. 545 and 548, respectively.

R. S., 9th ed., p. 2426. L. 1877, ch. 111, is repealed by L. 1896, ch. 547.

R. S., 9th ed., p. 2428. L. 1877, ch. 319, is repealed by L. 1896, ch. 548; L. 1877, ch. 419, is repealed by L. 1896, chs. 112 and 548.

R. S., 9th ed., p. 2439. L. 1878, chs. 47 and 86, are repealed by L. 1896, ch. 545.

R. S., 9th ed., pp. 2440-9.

R. S., 9th ed., p. 2440. L. 1878, ch. 287, is repealed by L. 1896, ch. 376.

R. S., 9th ed., p. 2441. L. 1878, ch. 300, is repealed by L. 1896, ch. 272.

R. S., 9th ed., p. 2446. L. 1878, ch. 315, § 13, is amended to read as follows:

§ 13. The lien may be discharged as follows:

1. By filing a certificate of the claimant or his successor in interest, duly acknowledged and proved, stating that the lien is discharged.

2. By lapse of time when ninety days have elapsed since the filing of the claim, and no action shall have been commenced to enforce the claim.

3. By satisfaction of any judgment that may be rendered in actions to foreclose the said liens or claims.

4. By the contractor depositing with the said financial officer of the said cities such a sum of money as shall be directed by a justice of the supreme court, which shall not be less than the amount claimed by the lienor, with interest thereon, for the term of one year, and such additional amount as the justice shall deem sufficient to cover the liability for costs; which sum of money so deposited shall remain with the said financial officer until the said lien shall have been discharged in the manner provided for in the subdivisions hereof marked one, two and three. [*Thus am. by L.* 1896, *ch.* 682, *taking effect May* 15, 1896.]

R. S., 9th ed., p. 2447. L. 1878, chs. 377 and 378, are repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2447-8. L. 1878, ch. 404, is repealed by L. 1896, ch. 225.

R. S., 9th ed., p. 2448. L. 1879, chs. 31 and 109, are repealed by L. 1896, chs. 548 and 546, respectively.

R. S., 9th ed., p. 2449. L. 1879, ch. 203, is amended by adding § 2, reading as follows:

§ 2. The appropriation by any historical society of this state of any real property for the purpose of enclosure, preservation, and the erection of monuments, is hereby declared to be for the public use. In case any such society desiring to acquire lands which it is by section one of this act authorized to have and hold, can not agree with the owners and occupants of such lands for the purchase thereof, such society is authorized to

acquire title to the same by condemnation, and the proceedings for that purpose shall be taken in the manner prescribed in title one of chapter twenty-three of the code of civil procedure known as "the condemnation law." [*Added by L.* 1896, *ch.* 681, *taking effect May* 15, 1896.]

R. S., 9th ed., p. 2452. L. 1879, chs. 248 and 249, are repealed by L. 1896, chs. 272, 547, respectively.

R. S., 9th ed., pp. 2454-2461, beginning with L. 1879, ch. 280, and ending at L. 1879, ch. 310, are repealed by L. 1896, ch. 545.

R. S., 9th ed., p. 2463. L. 1879, chs. 323 and 324, are repealed by L. 1896, chs. 548 and 376, respectively.

R. S., 9th ed., p. 2467. L. 1879, ch. 492, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2470. L. 1880, ch. 61, is repealed by L. 1896, ch. 545.

R. S., 9th ed., p. 2471. L. 1880, ch. 135, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2472-5. L. 1880, ch. 269, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2475. L. 1880, ch. 298, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2486. L. 1880, chs. 448, 472 and 480, are repealed by L. 1896, chs. 908, 272 and 548, respectively.

R. S., 9th ed., p. 2487. L. 1880, chs. 487 and 530, are repealed by L. 1896, chs. 548 and 547, respectively.

R. S., 9th ed., p. 2491. L. 1880, ch. 533, § 11, is amended to read as follows:

§ 11. This act shall not apply to the Hudson river, the Alleghany river and its tributaries, nor the Delaware river and its tributaries, nor the waters located in Franklin county, nor the Beaver river and its tributaries, nor the Oswegatchie river and its tributaries, nor the Grass river and its tributaries nor the Racquette river and its tributaries, nor the West Canada creek and its tributaries, nor the Black river and its tributaries, above its junction with the Moose river, nor the waters located in Lewis county, used for floating or driving logs or lumber; nor be construed to repeal any existing special law now applicable to any creek or river in this state. [*Thus am. by L.* 1881, *chs.* 16 *and* 74; *L.* 1891, *ch.* 385; *L.* 1896, *ch.* 683, *taking effect May* 15, 1896.]

R. S., 9th ed., pp. 2493-2506. L. 1880, ch. 542; L. 1889, ch. 463; L. 1886, ch. 266, are repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2506-2565.

R. S., 9th ed., p. 2506. L. 1880, ch. 552, is repealed by L. 1896, chs. 548 and 908.

R. S., 9th ed., p. 2508. L. 1881, chs. 1 and 10, are repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2509-10. L. 1881, ch. 49, is repealed by L. 1896, chs. 545 and 548; L. 1881, ch. 166, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2510-16. L. 1881, ch. 187, is repealed by L. 1896, ch. 546; but L. 1896, ch. 587, amends subd. 3 of § 10, and the subdivision thus amended is, probably, by § 33, of The Statutory Construction Law, p. 119, to be considered as an enactment subsequent to L. 1896, ch. 546, § 148, The State Charities Law. See page 3365, ante, where the amended subdivision is set out.

R. S., 9th ed., p. 2516. L. 1892, ch. 704, is repealed by L. 1896, ch. 546.

R. S., 9th ed., pp. 2516-17. L. 1881, ch. 203, is repealed by L. 1896, ch. 225.

R. S., 9th ed., p. 2527. L. 1881, chs. 398 and 400, are repealed by L. 1896, chs. 225 and 548, respectively.

R. S., 9th ed., p. 2529. L. 1881, chs. 432 and 433, are repealed by L. 1896, chs. 548 and 908, respectively.

R. S., 9th ed., p. 2530. L. 1881, ch. 493, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2533. L. 1881, ch. 574, is repealed by L. 1896, ch. 225.

R. S., 9th ed., p. 2536. L. 1881, ch. 659, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2539. L. 1882, ch. 108, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2540. L. 1882, ch. 190, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2544-5. L. 1882, ch. 292, is repealed by L. 1896, ch. 376.

R. S., 9th ed., pp. 2549-57. L. 1882, ch. 409, §§ 68 and 69, are repealed by L. 1896, ch. 548, and §§ 312-27, by L. 1896, ch. 908.

R. S., 9th ed., p. 2557. L. 1883, ch. 69, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2565-6. L. 1883, ch. 205, §§ 10 and 11, are amended to read as follows:

§ 10. When the amount in controversy exceeds five hundred dollars, either party feeling aggrieved by the final award or

final order of the board may appeal to the appellate division of the supreme court of the third department, upon questions of law, or upon questions of fact, or upon both questions of law and fact, arising upon the hearing of the claim, or upon the excess or insufficiency of such award or order. The appellate division of the supreme court shall hear such appeal, and affirm or reverse or modify such award or order, or dismiss such appeal, or award a new hearing before the board of claims, as justice may require. Every appeal shall be in writing, stating briefly the grounds upon which it is taken, and described by the party or his attorney. A copy of such notice of appeal shall be served upon the clerk of the board and upon the attorney-general. When the appeal is taken by the state, a copy of such notice of appeal shall be served upon the clerk of the board and the claimant or the attorney appearing for him. Service of notice of appeal shall be made in like manner as in the supreme court. The appeal must be taken within thirty days after the service of notice of the final award or order of the board. The party taking an appeal shall, at or before the time of serving the notice thereof, unless said board, or a commissioner thereof, shall extend the time, make and serve upon the attorney-general, or, if the appeal is taken by the state, upon the claimant or the attorney appearing for him, on the hearing before the board, a case containing so much of the evidence given before the board as may be necessary to present the questions raised by the notice of appeal; the respondent may propose amendments, and one of the commissioners before whom the claim was heard shall settle the same and sign the case so settled. Such appeals, brought after making up the annual calendar of the appellate division of the supreme court, or too late to be placed upon said calendar, may, if the attorney-general of the state may deem it to the best interests of the state, be put upon the calendar at any time, and brought on for a hearing as preferred causes upon a notice of fourteen days; and it shall be the duty of the clerk of the appellate division of the supreme court to place such causes on the calendar for the day which they shall be noticed, or upon which the cause shall be ordered by the court or stipulated by the parties to be heard; and in case no appeal is taken from the decision of said board, as provided in this act, the decision of the

R. S., 9th ed., pp. 2566-2596.

board shall be final. [*Thus am. by L.* 1884, *ch.* 60; *L.* 1887, *ch.* 507; *L.* 1896, *ch.* 451, *taking effect May* 9, 1896.]

§ 11. On the hearing of the appeal before the appellate division of the supreme court of the third department, only such questions shall be considered by that court as are raised by the notice of appeal; or upon the trial of the claim. The practice upon the hearing in the appellate division of the supreme court from the final order or award of the board shall conform, as near as may be, to the practice prevailing upon appeals from the courts of record of this state. Upon the hearing of all claims before the board, the rules of evidence now prevailing in the courts of record of this state shall be observed, and the practice upon such hearings of claims and taking appeals from the final order or award made therein, shall conform, as near as may be, to the practice now prevailing in the supreme court of this state upon the trial of actions and upon appeals, but in no such appeal shall the applicant be required to give a bond and undertaking. [*Thus am. by L.* 1884, *ch.* 60; *L.* 1896, *ch.* 451, *taking effect May* 9, 1896.]

R. S., 9th ed., pp. 2570-1. L. 1883, ch. 310, is repealed by L. 1896, ch. 376; L. 1868, ch. 106, is repealed by the same act.

R. S., 9th ed., p. 2571. L. 1883, ch. 329, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2574-5. L. 1883, ch. 342, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2596-8. L. 1883, ch. 378, §§ 1, 4 and 9, amended to read as follows:

§ 1. Every application hereafter made for the appointment of a receiver of a corporation, other than applications made by the attorney-general on behalf of the people of the state, shall be made at a special term of the supreme court, held in and for the judicial district in which the principal business office of the corporation is located; and all such applications made by the attorney-general shall be made in the judicial district in which the action in which the appointment is sought is triable; and any action or proceeding hereafter brought by the attorney-general on behalf of the people of the state against any corporation for the purpose of procuring its dissolution, the appointment of a receiver, or the sequestration of its property, may be brought in any county of the state, to be designated by the

attorney-general. [*Thus am. by L.* 1896, *ch.* 282, *taking effect April* 17, 1896.]

§ 4. It shall be the duty of every receiver of an insurance, banking or railroad corporation, or trust company, to present every six months to the special term of the supreme court, held in the judicial district wherein the place of trial or venue of the action or special proceeding in which he was appointed may then be, on the first day of its first sitting, after the expiration of such six months, and to file a copy of the same, if a receiver of a bank or trust company, with the bank superintendent; if a receiver of an insurance company, with the superintendent of insurance; and in each case with the attorney-general, an account exhibiting in detail the receipts of his trust, and the expenses paid and incurred therein during the preceding six months; and it shall be unlawful for any receiver of the character specified in this section to pay to any attorney or counsel any costs, fees or allowances until the amounts thereof shall have been stated to the special term in this manner, as expenses incurred, and shall have been approved by that court, by an order of the court duly entered; and any such order shall be the subject of review by the appellate division and the court of appeals on an appeal taken therefrom by any party aggrieved thereby. Of the intention to present such account, as aforesaid, the attorney-general, and also the surety or sureties on the official bond of such receiver, shall be given eight days' notice in writing; and the attorney-general shall examine the books and accounts of such receiver at least once every twelve months. [*Thus am. by L.* 1895, *ch.* 40; *L.* 1896, *ch.* 139, *taking effect March* 27, 1896.]

§ 9. All applications to the court, contemplated by this act, shall be made in the judicial district where the principal office of the corporation against which proceedings are taken is located, excepting such applications as are made in actions brought by the attorney-general on behalf of the people of the state, and all such applications shall be made in the judicial district in which the action is triable. [*Thus am. by L.* 1896, *ch.* 282, *taking effect April* 17, 1896.]

R. S., 9th ed., p. 2599. L. 1883, ch. 392, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2600. L. 1883, chs. 424 and 464, are repealed by L. 1896, chs. 548 and 908, respectively.

R. S., 9th ed., pp. 2603-6.

R. S., 9th ed., p. 2603. L. 1884, ch. 94, is repealed by L. 1896, ch. 376.

R. S., 9th ed., pp. 2604-5. L. 1884, ch. 133, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2606. L. 1884, ch. 280, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2606. L. 1884, ch. 285, § 2, is amended to read as follows:

§ 2. In every case where life insurance or annuity companies, or any corporation of the class provided for by article two of the insurance law, entitled "life, health and casualty insurance corporations," whether formed under said article or prior thereto, has been or hereafter may be dissolved, and a receiver thereof appointed, upon the application of the attorney-general, or by action begun in the name of the people of the state of New York, each and every security and fund which shall have been deposited by such company prior to its dissolution, with the superintendent of the insurance department, for the security and protection of its policy-holders or any class of such policy-holders, under the statutes in such cases made and provided, may, by an order of the supreme court, made at a special term thereof held within the judicial district in which the principal office of such company was located, prior to its dissolution, upon the application of the attorney-general, after service of eight days' written notice of such application upon the superintendent of the insurance department, be transferred from the said superintendent of the insurance department to the receiver of such company; and thereupon the said superintendent shall deliver such funds and securities to such receiver, and in him the title thereto shall immediately vest. Such receiver shall thereupon convert such securities and funds into money, and shall distribute the proceeds thereof, and of each and every class of such funds or securities, among the respective holders of valid policies of such company for whose benefit and security the deposit or deposits were originally made proportionately to the respective valuations of such policies, as shall be ascertained in proceedings taken by such receiver for the valuation of policies and the determination of the liabilities of such company under the statutes in such cases made and provided, and the course and practice of the supreme court in cases of insolvent corporations, until such valua-

R. S., 9th ed., pp. 2606-8.

tion shall have been paid in full. If any portion of such proceeds shall then remain, such balance may, under an order of the supreme court in such behalf duly made at special term, be made a part of the general assets of such receivership, and thereupon be distributed by said receiver in payment of or upon the general liabilities of such dissolved company according to law. And in case of a corporation formed under the laws of any other state, doing insurance business in this state of the nature of that done by the corporation above mentioned, in case of any action or proceeding brought or hereafter to be brought in this state by the attorney-general, or in the name of the people of the state of New York, for the winding up of its business in this state, or for or in solving* distribution of its assets therein, the same proceedings may be had with reference to any securities and funds deposited by such corporation with the superintendent of the insurance department of this state under the statutes in such case made and provided, as are hereinbefore provided with reference to deposits of corporations of this state, save only that the order for transfer of the deposit may be made in the judicial district in which the principal office of the corporation in this state was located at the commencement of the action or proceedings, or in the third judicial district. [*Thus am. by L.* 1896, *ch.* 322, *taking effect April* 18, 1896.]

R. S., 9th ed., p. 2608. L. 1884, ch. 312, § 1, is amended to read as follows:

§ 1. In every public department and upon all public works of the state of New York, and of the cities, counties, towns and villages thereof, and also in noncompetitive examinations under the civil service rules, laws or regulations of the same, wherever they apply, honorably discharged Union soldiers, sailors and marines shall be preferred for appointment, employment and promotion; age, loss of limb or other physical impairment which does not, in fact, incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity necessary to discharge the duties of the position involved. And no person holding a position by appointment or employment in the state of New York or of the several cities, counties, towns or villages thereof and receiving a salary or per diem pay from the state or from any of the several cities, counties, towns or villages thereof,

* So in the original.

R. S., 9th ed., pp. 2608, 2611.

who is an honorably discharged soldier, sailor or marine, having served as such in the Union army or navy during the war of the rebellion and who shall not have served in the Confederate army or navy, shall be removed from such position or employment except for incompetency or misconduct shown, after a hearing upon due notice, upon the charge made, and with the right to such employe or appointee to a review by writ of certiorari; a refusal to allow the preference provided for in this act to any honorably discharged Union soldier, sailor or marine, or a reduction of his compensation intended to bring about a resignation, shall be deemed a misdemeanor, and such honorably discharged soldier, sailor or marine shall have a right of action therefor in any court of competent jurisdiction for damages, and also a remedy by mandamus for righting the wrong. The burden of proving incompetency or misconduct shall be upon the party alleging the same. But the provisions of this act shall not be construed to apply to the position of private secretary or deputy of an official or department or to any other person holding a strictly confidential position. [*Thus am. by L.* 1887, *ch.* 464; *L.* 1894, *ch.* 716; *L.* 1896, *ch.* 821, *taking effect May* 21, 1896.]

R. S., 9th ed., p. 2611. L. 1884, ch. 315, § 7, is amended to read as follows:

§ 7. This act shall not apply to household goods, pianos, organs, scales, butchers' and meat-market tools and fixtures, wood-cutting machines and wood-cutting machinery, engines, boilers and portable furnaces and boilers for heating purposes, portable saw-mills and saw machines, threshing machines and horse-powers, mowing machines, reapers and harvesters and grain-drills, with their attachments, dairy sizes of centrifugal cream separators, vehicles, coaches, hearses, carriages, buggies and phaetons, bicycles and tricycles of all kinds and any other device for locomotion by human power; provided, that the contracts for the sale of the same be executed in duplicate, and one duplicate shall be delivered to the purchaser. In case household goods, pianos, organs, scales, butchers' and meat-market tools and fixtures, wood-cutting machines and wood-cutting machinery, engines, boilers and portable furnaces and boilers for heating purposes, portable sawmills and saw machines, threshing machines and horse-powers, mowing machines, reapers and harvesters and

grain-drills, with their attachments, vehicles, coaches, hearses, carriages, buggies and phaetons, bicycles and tricycles of all kinds and any other device for locomotion by human power, are sold upon the condition that the titles shall remain in the vendor, or some other person than the purchaser, until the payment of the purchase-price, or until the occurring of any future event or contingency, and the same are retaken by the vendor, or by his successor in interest, such property so retaken shall be retained for thirty days by the person by whom or on whose behalf the same has been so taken, during which time the purchaser or his successor in interest may fulfill such contract or purchase, and shall be entitled thereupon to receive such property. After the expiration of such time, the person by whom or on whose behalf the said property has been taken, may proceed to sell the same at public auction, and out of the proceeds may retain the balance remaining unpaid on the purchase-price and the expenses of storing, advertising and sale thereof; and any surplus remaining shall be paid to the person or persons from whom the property was taken. But no such sale shall be made until after the giving of a printed or written notice of such sale to the person or persons from whom the said property has been taken, requiring such person or persons to pay such unpaid balance and expenses, and that in case of default in so doing that such property will be sold to pay the same, at a time and place to be specified in the notice. Such notice shall be served personally at least fifteen days before the time of such sale upon the person or persons from whom the property was taken, providing such service can be made with reasonable diligence within the state of New York. If the person or persons from whom the property was taken can not with reasonable diligence be found within the state of New York, then such notice shall be given by publication once in each week for four successive weeks before the time of such sale in a newspaper published at or nearest the place where such sale is to take place. This act shall not apply to railroad equipment or rolling stock sold, leased or loaned under a contract which has been or must be recorded pursuant to the provisions of chapter three hundred and eighty-three of the laws of eighteen hundred and eighty-three, entitled "An act relating to certain contracts for the lease or conditional sale of railroad equipment and rolling stock, and providing for the record thereof." [*Thus am. by L.*

R. S., 9th ed., pp. 2614-2639.

1894, *ch.* 420; *L.* 1895, *chs.* 523, 925; *L.* 1896, *ch.* 601, *taking effect May* 13, 1896.]

R. S., 9th ed., p. 2614. L. 1884, chs. 344 and 353, are repealed by L. 1896, chs. 548 and 908, respectively.

R. S., 9th ed., p. 2616. L. 1884, ch. 381, is repealed by L. 1896, ch. 272.

R. S., 9th ed., pp. 2621-5. L. 1884, ch. 438, beginning with " by an indenture in writing " in § 5 on page 2621, is repealed by L. 1896, ch. 272, except the first three lines of § 7 on page 2622, ending with " adoption."

R. S., 9th ed., p. 2626. L. 1885, ch. 10, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2627. L. 1885, ch. 118, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2628. L. 1885, ch. 178, is repealed by L. 1896, ch. 545.

R. S., 9th ed., p. 2632. L. 1885, ch. 262, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2932-3. L. 1885, ch. 269, is repealed by L. 1896, ch. 376.

R. S., 9th ed., pp. 2633-4. L. 1885, ch. 281, is repealed by L. 1896, ch. 546

R. S., 9th ed., p. 2639. L. 1885, ch. 342, § 5, is amended to read as follows:

§ 5. Priority of liens; building contract.— The liens provided for in this act shall be preferred as prior liens to any conveyance, judgment or other claim which was not docketed or recorded at the time of filing the notice of lien prescribed in fourth section of this act, and prior to advances made upon any mortgage on the premises after the filing of such notice of lien, and prior to the claim of the creditor who has not furnished materials or performed labor upon any land, or towards the erection or improvement of premises described in said notice of lien, and which have been assigned by the owner, lessee or person in possession thereof by a general assignment for the benefit of creditors within thirty days before the filing of the notice of lien provided for in the fourth section of this act. No assignment of any contract for the performance of any labor or services or the furnishing of any materials for any of the purposes specified in the first section of

this act; nor of the moneys due or to become due therefor, nor of any part thereof, nor any order drawn by any contractor or subcontractor for the payment of such moneys shall have any force or validity until the contract, or a statement containing the substance thereof, and such assignment, or copies thereof, or a copy of such order, shall be filed in the office of the clerk of the county wherein the premises are situated upon which such labor or services have been or are to be performed, or such materials have been or are to be furnished, and may then take effect and be enforced as of the time of such filing. The clerk of the county shall immediately index the same in the "lien docket" provided for in section four of this act. But nothing in this act shall affect the priority of the amount actually owing on a mortgage given for purchase-money. Liens, claims, assignments and orders of contractors, subcontractors, laborers and material-men shall be preferred over any other claim in the distribution of any fund pursuant to the provisions of this act. In cases in which the owner has made an agreement to sell and convey the premises to the contractor or other person, such owner shall be deemed to be the owner within the intent and meaning of this act until the deed had been actually delivered and recorded conveying said premises pursuant to such agreement. [*Thus am. by L.* 1896, *ch.* 915, *taking effect May* 27, 1896.]

R. S., 9th ed., pp. 2651-6. L. 1885, ch. 411, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2656. L. 1885, ch. 419, is repealed by L. 1896, ch. 377.

R. S., 9th ed., p. 2657. L. 1885, ch. 427, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2664. L. 1886, ch. 143, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2665. L. 1886, chs. 215 and 266 are repealed by L. 1896, chs. 545 and 908, respectively.

R. S., 9th ed., p. 2672. L. 1886, ch. 409, § 2, is amended to read as follows:

§ 2. No child under fourteen years of age shall be employed in any manufacturing establishment in this state. It shall be the

R. S., 9th ed., pp. 2672-3.

duty of every person employing children to keep a register, in which shall be recorded the name, birthplace, age and place of residence of every person employed by him under the age of sixteen years; and it shall be unlawful for any proprietor, agent, foreman or other person in or connected with a manufacturing establishment to hire or employ any child under the age of sixteen years to work therein without there is first provided and placed on file in the office thereof a certificate as hereinafter set forth, which said register and certificate shall be produced for inspection on demand made by the inspector, assistant inspector or any of the deputies appointed under this act. The certificate to be provided as above set forth shall be a certificate from the board or department of health or health commissioner or commissioners of the city, town or incorporated village where such child resides or is employed or is about to be employed, which said certificate shall state the date and place of birth of such child whenever possible, and shall describe as accurately as may be the color of hair, color of eyes, height and weight, and any distinguishing facial marks of said child, and shall further state that the health commissioners or commissioners, or the executive officer or officers of the board or department of health, or any person or persons designated by him or them as hereinafter provided, is satisfied that such child is physically able to perform the work which it intends to do, and that the date of birth of said child as set forth in said certificate is correct. Wherever the date of birth of such child can not be ascertained by said health commissioner or commissioners or board or department of health, such certificate so provided shall so set forth and shall state that the health commissioner or commissioners or executive officer or officers of the board or department of health or the person or persons designated by them as hereinafter provided is satisfied that such child is fourteen years of age or upwards. It shall be the duty of the health commissioner or commissioners and the board or department of health of the cities, towns and incorporated villages of the state to issue the certificate as above set forth to any child applying therefor; provided, however, that such health commissioner or commissioners, board or department of health, shall first ascertain the date and place of birth of the

child, wherever possible, the color of hair, color of eyes, height and weight, and any distinguishing facial marks of said child, and the physical fitness of such child for the work which it intends to do. Such certificate shall not be issued, however, unless there shall be placed on file with such health commissioner or commissioners, board or department of health, the affidavit of the parent or guardian of such child, or person standing in parental relation to it, stating the age, date and place of birth of said child, and unless such health commissioner or commissioners, board or department of health, or any person or persons designated by them as hereinafter set forth are satisfied that said child is fourteen years of age and has regularly attended upon instruction at a school in which at least the common branches of reading, spelling, writing, arithmetic, English grammar and geography are taught, or upon equivalent instruction by a competent teacher elsewhere than at a school for a period equal to one school year, that is to say, as many days as the public school of the city or school district in which such child resides was in session during the last preceding year, or if said child be a nonresident, then as many days as the public school of the city or town where such child is or is about to be employed was in session during the last previous school year. The foregoing provisions of this section shall not, however, be so construed as to prevent any child fourteen years of age or upwards who can read and write simple sentences in the English language from being employed in any manufacturing establishment in this state during the vacation of the public schools in the city or school district where such child lives, or if such child be a nonresident then, during the vacation of the public schools in the city or school district where said manufacturing establishment is situated, if all of the provisions hereinbefore set forth except that requiring school attendance shall have been complied with. Where such child of the age of fourteen years or upwards has complied with all the provisions of this section except that requiring school attendance, the certificate issued by such health commissioner or commissioners, board or department of health, of the city or town shall so set forth and shall be designated a "vacation certificate," and it shall be unlawful for any proprietor, agent, foreman or other person in or connected with a manufacturing establishment, to hire or employ

R. S., 9th ed., pp. 2672-3

any child under the age of sixteen years to whom only such "vacation certificate" has been issued at any time other than the time of the school vacation of the public school in the city or school district where such child resides, or if it be a nonresident, at any time other than the time of the school vacation of the public school in the city or school district where such manufacturing establishment is situated. The certificate or certificates to be issued in accordance with the provisions of this section shall be over the signature of the board or department of health or any executive officer or officers thereof, or the health commissioner or commissioners of the city, town or incorporated village where such child resides or is employed or about to be employed, or over the signature of any person or persons designated by such board or department of health, or health commissioner or commissioners, for that purpose, which designation shall be in writing and filed in the office of the clerk of the county in which the office of such board or department of health or health commissioner or commissioners is situated. It shall be the duty of the principal or executive officer of any school or of a teacher elsewhere than at a school to furnish, upon demand, to any child who has attended upon instruction at such school or by such teacher, or to furnish to the factory inspector, assistant factory inspector or any deputy factory inspector, a certificate stating the school attendance by such child. It shall be the duty of the board or department of health and health commissioner or commissioners in every city, town and incorporated village in the state to forward over their official signature, between the first and tenth days of each month, to the factory inspector at his principal office, a list setting forth the names of the children to whom the certificates herein provided have been issued and the age, date and place of birth, whenever possible, color of eyes, color of hair, height, weight and distinguishing facial marks of such child or children. It shall be unlawful for any notary public or other officer authorized and empowered by law to administer to any person an oath, to demand or receive a fee for taking or administering an oath to a parent of, guardian of, or person in parental relation to any child as to the age of such child where the affidavit thus taken is used or intended to be used for the purpose of obtaining a certificate as provided for in the foregoing section from any board or department of health or health commissioner or commissioners

R. S., 9th ed., pp. 2677-8.

as herein set forth. [*Thus am. by L.* 1887, *ch.* 462; *L.* 1889, *ch.* 560; *L.* 1892, *ch.* 673; *L.* 1896, *ch.* 991, *taking effect September* 29, 1896.]

R. S., 9th ed., pp. 2677-2681. L. 1886, ch. 409, §§ 13a and 13b are added, and §§ 13, 14* and 21* are amended to read as follows:

§ 13. No room or apartment in any tenement or dwelling-house, shall be used, except by the immediate members of the family living therein, for the manufacture of coats, vests, trousers, knee-pants, overalls, cloaks, hats, caps, suspenders, jerseys, blouses, waists, waist-bands, underwear, neckwear, furs, fur trimmings, fur garments, shirts, purses, feathers, artificial flowers, cigarettes or cigars. No person, firm or corporation shall hire or employ any person to work in any room or apartment, in any rear building or buildings in the rear of a tenement or dwelling-house at making in whole or in part any of the articles mentioned in this section, without first obtaining a written permit from the factory inspector, his assistants or one of his deputies, stating the maximum number of persons allowed to be employed therein. Such permit shall not be granted until an inspection of such premises is made by the factory inspector, his assistant, or one of his deputies, and may be revoked by the factory inspector, at any time the health of the community or of those so employed may require it. It shall be framed and posted in a conspicuous place in the room or in one of the rooms to which it relates. Every person, firm, company or corporation, contracting for the manufacture of any of the articles mentioned in this section, or giving out the incomplete material from which they or any of them are to be made, or to be wholly or partially finished, shall keep a written register of the names and addresses of all persons to whom such work is given to be made, or with whom they may have contracted to do the same. Such register shall be produced for inspection and a copy thereof shall be furnished on demand made by the factory inspector, his assistant or one of his deputies. No person shall knowingly sell or expose for sale any of the articles mentioned in this section which were made in any dwelling-house, tenement-house or building in the rear of a tenement or dwelling-house, without the permit required by this section; and any officer appointed to enforce the provisions of this act who shall find any of such articles made in violation of the

provisions hereof, must conspicuously affix to such article a label containing the words "tenement made" printed in small pica capital letters on a tag not less than four inches in length; and such officer shall notify the person owning or alleged to own such articles that he so labelled them. No person shall remove or deface any tag or label so affixed. When any article mentioned in this section is found by the factory inspector, his assistant, or any of his deputies, to be made under unclean or unhealthy conditions, he shall affix thereto the label prescribed by this section, and shall immediately notify the local board of health, whose duty it shall be to disinfect the same and thereupon remove such label. If the factory inspector, assistant factory inspector, or any deputy inspector, finds evidence of infectious or contagious diseases present in any workshop, or in goods manufactured or in process of manufacture therein, or shall find goods used therein to be unfit for use, such factory inspector, assistant factory inspector or deputy factory inspector shall forthwith report the same to the local board of health, and the said local board of health shall forthwith issue such order or orders as the public health may require. Said local board of health is hereby empowered to condemn and destroy all such infectious and contagious articles or any articles manufactured or in process of manufacture under unclean or unhealthy conditions as aforesaid. [*Thus am. by L.* 1892, *ch.* 673; *L.* 1893, *ch.* 173; *L.* 1896, *ch.* 991, *taking effect September* 29, 1896.]

§ 13a. Whenever any room or apartment in any tenement or dwelling-house shall be used except by the immediate members of the family living therein for the manufacture of coats, vests, trousers, knee pants, overalls, cloaks, hats, caps, suspenders, jerseys, blouses, waists, waist bands, underwear, neckwear, furs, fur trimmings, fur garments, shirts, purses, feathers, artificial flowers, cigarettes or cigars, the factory inspector, assistant factory inspector, or deputy factory inspector shall serve a notice personally upon the owner or owners, lessee or lessees, if any, and the agent or agents, if any, of such owner or owners, lessee or lessees of such tenement or dwelling-house of the fact that such room or apartment in such tenement or dwelling-house is being so used, and that if such use be continued the owner or owners of such tenement or dwelling-house may be subject to

punishment for misdemeanor. If such room or apartment in any tenement or dwelling-house shall be continued to be used in such manner by the same person or persons at a period of thirty days later than the personal service of such notice as above provided, the owner and lessee of said premises and the agent, if any, of such owner or lessee permitting or suffering such use as aforesaid shall be guilty of a misdemeanor, punishable in like manner and to like extent as prescribed by the fourth section of this act in the amendment thereby made of section twenty-one; provided, however, in case of personal service of the notice as in this section prescribed that if the owner or owners or his or their agent or agents on his or their behalf, shall, within fifteen days after such service of such notice and its coming to his or their actual knowledge, if not served personally, institute a proceeding for dispossessing the tenant as authorized in the sixth section of this act in the amendatory section numbered thirteen-b, therein set forth, and shall in good faith prosecute such proceeding and dispossess the said tenant as soon as he or they is or are enabled to do so, in good faith and by the exercise of reasonable diligence, such owner or owners and his or their agent or agents shall not under this section be deemed guilty of or punishable as for a misdemeanor, unless for a subsequent offense. [*Added by L.* 1896, *ch.* 991, *taking effect September* 29, 1896.]

§ 13b. Wherever any room or apartment in any tenement or dwelling-house shall be used by any person other than the tenant thereof or immediate members of the family of such tenant living therein for the manufacture of coats, vests, trousers, knee pants, overalls, cloaks, hats, caps, suspenders, jerseys, blouses, waists, waist bands, underwear, neckwear, furs, fur trimmings, fur garments, shirts, purses, feathers, artificial flowers, cigarettes or cigars, except as provided by section seven of this act, such use shall be deemed good and sufficient cause for the dispossessing of such tenant, in a special proceeding brought by the landlord of said premises to dispossess such tenants. [*Added by L.* 1896, *ch.* 991, *taking effect September* 29, 1896.]

§ 14.* Upon the expiration of the term of office of the present factory inspector and upon the expiration of the term of office of each of his successors, the governor shall, by and with the advice and consent of the senate, appoint a factory inspector; and upon

R. S., 9th ed., pp. 2679-81.

the expiration of the term of office of the present assistant factory inspector, and upon the expiration of the term of office of each of his successors, the governor shall, by and with the advice and consent of the senate, appoint an assistant factory inspector. Each factory inspector and assistant factory inspector shall hold over and continue in office after the expiration of his term of office until his successor shall be appointed and qualified. The factory inspector is hereby authorized to appoint from time to time, not exceeding twenty-nine persons to be deputy inspectors, not more than ten of whom shall be women, and he shall have power to remove the same at any time. The term of office of the factory inspector and of the assistant factory inspector shall be three years each. Annual salaries shall be paid in equal monthly installments as follows: To the factory inspector, three thousand dollars; to the assistant factory inspector, two thousand five hundred dollars; to each deputy factory inspector, one thousand two hundred dollars. All necessary traveling and other expenses incurred by the factory inspector, assistant factory inspector and the deputy factory inspectors in the discharge of their duties, shall be paid monthly by the treasurer upon the warrant of the comptroller issued upon proper vouchers therefor. A sub-office may be opened in the city of New York. The reasonable necessary traveling and other expenses of the deputy factory inspectors while engaged in the performance of their duties shall be paid upon vouchers approved by the factory inspector and audited by the comptroller. [*Thus am. by L.* 1887, *ch.* 462; *L.* 1890, *ch.* 398; *L.* 1892, *ch.* 673; *L.* 1893, *ch.* 173; *L.* 1896, *ch.* 991, *taking effect September* 29, 1896.]

§ 21.* Any person who violates or omits to comply with any of the provisions of this act, or who suffers or permits any child to be employed in violation of its provisions, shall be guilty of a misdemeanor and on conviction shall be punished by a fine of not less than thirty dollars nor more than one hundred dollars for a first offense, and not less than sixty dollars nor more than two hundred dollars for a second offense, or imprisonment for not more than thirty days, and for a third offense of not less than three hundred dollars, nor more than five hundred dollars, and not more than thirty days' imprisonment. [*Thus am. by L.* 1887,

R. S., 9th ed., p. 2688.

ch. 462; *L.* 1889, *ch.* 560; *L.* 1890, *ch.* 398; *L.* 1892; *ch.* 673; *L.* 1893, *ch.* 173; *L.* 1896, *ch.* 991, *taking effect September* 29, 1896.]

R. S., 9th ed., pp. 2683-4. L. 1886, ch. 497, § 1 is amended and § 8 added, as follows:

§ 1. Any village of this state owning a system of water-works that have been constructed pursuant to the provisions of chapter one hundred and eighty-one of the laws of eighteen hundred and seventy-five may extend their water mains beyond the corporate limits of the village for the purpose of selling said village water, under such rules and regulations as the board of water commissioners may prescribe, to persons, corporations, towns, fire districts and villages located outside the corporate boundaries, subject to the following procedure and requirements. The board of water commissioners may at any time call a special corporation meeting, and it shall be their duty to call such a meeting whenever petitioned so to do by twenty-five electors of said village, to consider the question of extending the water mains for the purpose aforesaid. Said special meeting shall be called by publishing a notice once in each week for two successive weeks in the village paper, stating when and where the said special meeting will be held, and the object of said meeting. Said meeting shall be within five days after the second publication. All electors qualified to vote at the annual corporation meeting shall be entitled to vote at such special meeting; the voting shall be by ballot. On one ballot shall be written or printed " For extending the water mains." On the other ballot shall be written or printed "Against extending the water mains." Said special meeting shall be open and presided over by the board of water commissioners, who shall have for that occasion the powers of a board of inspectors of election. Any person voting illegally at said election shall be subject to all the pains and penalties for illegal voting at town meetings. Said meeting shall be declared open for the reception of votes at one o'clock in the afternoon, and the poll shall so remain open for two hours, when if all persons present entitled to vote have had an opportunity to vote the said polls shall be declared closed and the water commissioners, acting as such inspectors, shall at once proceed to canvass said vote. If two-thirds of the votes polled shall be "For extending the water mains," then the water board shall have authority to ex-

R. S., 9th ed., pp. 2684-9.

tend said mains as aforesaid, provided that they shall not enter upon said work until they have entered upon their records a minute to the effect that they have received pledges for the taking and paying for said village water by persons, corporations, towns, fire districts and villages located beyond the village limits, which amount to at least ten per centum on the estimated cost of said extension; and provided further, that the cost of said extension added to the original cost of the water-works shall not exceed the limit stated in chapter one hundred and eighty-one of the laws of eighteen hundred and seventy-five. The board of water commissioners are authorized to borrow the money needed to build any such extension in the manner provided for in said act of eighteen hundred and seventy-five. [*Thus am. by L.* 1896, *ch.* 329, *taking effect April* 18, 1896.]

§ 2. The water commissioners of any village owning a system of water-works may contract with the town board of a town, the fire commissioners of a fire district established as provided for by section thirty-seven of the County law or the trustees of an incorporated village into or through which the mains of such system of water-works have been extended as provided by this act, for the furnishing of water for the extinguishment of fires and for sanitary and other purposes. Such contract entered into by such town board, fire commissioners or trustees shall be valid and binding upon such town, fire district or village, and the amount agreed to be paid in such contract shall be annually raised as a part of the expenses of such town, fire district or village and paid over to the water commissioners of the village owning such system of water-works, to be expended by them in the construction, operation and maintenance of such extended system. Such contract shall not be made for a period longer than ten years, nor shall the amount agreed to be paid in any one year exceed two and one-half mills for every dollar of the taxable property in such town, fire district or village. [*Added by L.* 1896, *ch.* 329, *taking effect April* 18, 1896.]

R. S., 9th ed., pp. 2684-5. L. 1886, ch. 539, is repealed by L. 1896, ch. 546.

R. S., 9th ed., pp. 2686-7. L. 1886, ch. 659, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2688-9. L. 1886, ch. 679, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2702. L. 1887, ch. 343, is repealed by L. 1896, ch. 545.

R. S., 9th ed., pp. 2702-9. L. 1887, ch. 375, is repealed by L. 1896, ch. 545.

R. S., 9th ed., pp. 2709-12. L. 1887, ch. 377, is repealed by L. 1896, ch. 376.

R. S., 9th ed., pp. 2712-6. L. 1887, ch. 401, is repealed by L. 1896, ch. 376 (The Domestic Commerce Law); but said ch. 401 is amended throughout by L. 1896, ch. 977, taking effect May 28, 1896, and as so amended is probably to be considered an enactment subsequent to L. 1896, ch. 376, by § 33 of The Statutory Construction Law, ante, p. 119. L. 1887, ch. 401, as thus amended, reads as follows:

§ 1. It is hereby declared to be unlawful for any person or persons, without the written consent of the owner or owners, or shipper or shippers, to use, sell, dispose of, buy or traffic in any milk or cream cans belonging to any dealer or dealers or shipper or shippers of milk or cream residing in the state of New York, or elsewhere, who may ship milk or cream to any city, town or place within this state, having the name, initials, number, mark, sign, monogram or designation of the owner or owners, dealer or dealers, or shipper or shippers, stamped, marked, fastened, annexed or in any way attached to or fastened upon said can or cans; and the owner or owners, shipper or shippers, of any milk or cream can or cans, may appoint with all of their, and each of their respective powers, an agent in writing to enforce the provisions of this act.

§ 2. The fact that any person or persons, without the consent of the agent, of the owner or owners, dealer or dealers, or shipper or shippers thereof, either selling, disposing of, buying, trafficking in, or having in his, her, or their possession, or under his, her, or their control, any such milk or cream can or cans, shall be presumptive evidence of the unlawful use, sale, purchase of, or traffic in such can or cans.

§ 3. Any such can or cans, full or partly full of milk or cream used in violation of this act, may be emptied into the street, or elsewhere, of their contents by the owner or owners, dealer or dealers, or shipper or shippers, or his, her, or their agent, and taken possession of by any of said several parties, who shall not be liable for damages therefor, provided that any of said several parties entitled to the possession of such can or cans shall first

R. S., 9th ed., p. 2718.

give notice to the party or parties having the possession of such can or cans to empty the same.

§ 4. Any person or persons who shall, in violation of this act, either use, sell, dispose of, buy, traffic in or have in his, her or their possession any such can or cans, or who shall willfully mar, erase or change by re-marking or otherwise the said name, initial, number, mark, sign, monogram, or designation of any such owner or owners, dealer or dealers and shipper or shippers so stamped, marked or fastened upon said can or cans, as in this act provided, shall be liable to a penalty of fifty dollars for each and every offense, and each and any of such can or cans either so used, so disposed of, bought, trafficked in or found in his, her or their possession; such penalty may be recovered in an action in the supreme court of this state, or any other court of record in this state, with costs and disbursements.

§ 5. The agent of such owner or owners, dealer or dealers, or shipper or shippers shall have full power and authority to sue in his own name and to take any proceedings authorized by this act, without joining the real party or parties in interest. That all persons may be joined in one proceeding as plaintiffs or defendants, or both, and as many different persons as shall have jointly or severally violated any of the provisions of this act, notwithstanding the cause of action is separate and distinct, and may recover against any one or more of such person or persons.

§ 6. If any such owner or owners, dealer or dealers, or shipper or shippers, his, her or their agent or representative has reason to believe and does believe that any of such cans so stamped or marked has or have been unlawfully used as aforesaid by any person or persons, or that any person or persons has any of such can or cans secreted in or upon his, her or their premises, or in any place or places, any such owner or owners, dealer or dealers, shipper or shippers, his, her or their agent or representative may go before any justice of the peace or magistrate having civil jurisdiction in the city, town or place, or in any part thereof wherein such offense may have been committed, and make a complaint thereof, under oath, which complaint may be wholly upon information and belief, whereupon said justice of the peace or magistrate before whom such complaint shall have been made shall forthwith and without delay issue a process in the nature of a search warrant, directed to any constable, marshal or any

other executive officer of any city, town or place, which shall recite the complaint, or the substance thereof, and shall command the said constable, marshal or other executive officer to immediately search the premises, place or places mentioned in said complaint, and if upon such search any such can or cans, as mentioned in said complaint, shall be found, to bring the same, together with the body of the person in whose possession they may have been, before such justice of the peace or magistrate.

§ 7. That upon the issue of any such process as aforesaid, the said constable, marshal or other executive officer shall be unable to find the person or persons therein named, but shall find any can or cans therein set forth, he shall bring said can or cans before such justice of the peace or magistrate, who shall thereupon proceed to determine the right of such complainant thereto, and if upon the hearing had thereon he shall be satisfied that such can or cans rightfully belong to such complainant, or that he is entitled to the possession thereof, he shall forthwith deliver the same into his, her or their possession, or the possession of his, her or their agent or representative.

§ 8. When any person or persons as aforesaid, shall be brought before any judge, justice of the peace or magistrate, such person or persons shall enter into a recognizance with good and sufficient surety, to be approved by such justice or magistrate in the penalty of two hundred and fifty dollars, to appear at such time as the said justice or magistrate shall appoint for a hearing under said complaint, which hearing shall not be less than three nor more than five days from the day of said arrest, and may be adjourned from time to time by said justice or magistrate in his discretion, and in default of such recognizance or undertaking, such person or persons shall be committed by such justice to the county jail, to abide a hearing, upon which hearing such justice or magistrate shall proceed to hear and determine as to the truth of said complaint, and the ownership of said can or cans, that may be brought before him, and if said can or cans are found in the possession of a corporation, the president, treasurer, secretary, director, or other officer of said corporation, in whose possession said can or cans are found, may be arrested, and shall be liable and shall be obliged to give the same undertaking as heretofore mentioned for other persons; and if such justice or

magistrate shall determine such person or persons, or corporation or its members to be guilty of the offense as substantially charged in the complaint, he shall thereupon render judgment against such person or persons, or corporations for the penalty herein provided for, the sum of fifty dollars for each can, together with all costs, disbursements and expenses incurred by said owner or owners, dealer or dealers, shipper or shippers, his, her or their agent, said amount shall be paid to the said owner or owners, dealer or dealers, shipper or shippers, or his, her or their agent, and in default of the payment thereof, an execution shall issue against the goods and chattels and the body of such person or persons, and in the case of a corporation against the body of an officer or officers of said corporation, and said justice or magistrate shall immediately deliver such can or cans into the possession of said owner or owners, dealer or dealers, shipper or shippers, or to his, her or their agent.

§ 9. The justice of the peace or magistrate, or any other judge before whom the case is to be tried, shall at any time, before, after or during the trial of any proceeding had under this act, amend any and all proceedings had before him as justice may require, and it is further enacted that the several justices of the district courts of the city of New York shall have jurisdiction under this act, and the complainant may elect the district within which he will commence proceedings under this act, irrespective of the residences of the several parties to such proceedings, and the location of the subject-matter of the action.

§ 10. The owner or owners, dealer or dealers, shipper or shippers, and the several superintendents of the various railroad companies and the branches and connections thereof, and the steamboat lines operating their lines, or any portion thereof, in the state of New York, or elsewhere, shall have power to collect, gather and take into his possession, from any person or persons within the state of New York, or wherever found in this state, any such milk or cream can or cans, and shall have power to appoint an agent therefor.

§ 11. The certificate of any superintendent of any of the railroad companies or steamboat lines mentioned in this act, or any person or persons authorized thereto, in this act, appointing an agent to collect such can or cans, duly acknowledged before a

notary public, shall be presumptive evidence of the authority of such agent.

§ 12. Such agent shall have full power to collect, gather and take into his possession from any person or persons, or corporation, or wherever found, any such milk or cream can or cans, and in case of resistance may call to his aid the assistance of any constable or police officer who shall assist him to take possession of such can or cans.

R. S., 9th ed., p. 2717. L. 1887, ch. 463, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2719. L. 1887, ch. 537, is repealed by L. 1896, ch. 272.

R. S., 9th ed., p. 2720. L. 1887, ch. 655, is repealed by L. 1896, ch. 225.

R. S., 9th ed., p. 2721. L. 1887, ch. 675, is repealed by L. 1896, ch. 548. L. 1887, ch. 679, is repealed by L. 1896, chs. 112 and 548.

R. S., 9th ed., pp. 2721-3. L. 1887, ch. 706, is repealed by L. 1896, ch. 225 (The Poor Law); but § 6 is added by L. 1896, ch. 598, taking effect May 13, 1896, and is probably to be considered an enactment subsequent to L. 1896, ch. 225, by § 33 of The Statutory Construction Law, ante, p. 119. § 6 reads as follows:

§ 6. In all cities of this state containing less than one hundred thousand inhabitants, where there are more than one post of the Grand Army of the Republic, there shall be appointed and constituted a joint relief committee, consisting of one member from each post, of the Grand Army of the Republic in said city, which shall have complied with the provisions of law as hereinafter provided, to be chosen in such manner as such post shall direct, and one member appointed by the auditing board of said city, to which all orders for relief drawn by the commander or quartermaster of any post of the Grand Army of the Republic in said city or town, shall be referred; and no relief shall be furnished under the provisions of this act, except upon the approval and recommendation of said committee or a majority of the members thereof. No post of the Grand Army of the Republic shall be entitled to membership in said committee unless such post shall have complied with the provisions of sections three and four of this act, and in case such post shall fail to so comply with the

R. S., 9th ed., pp. 2730-2764.

provisions of said sections and to select a member of said committee the commander or quartermaster shall not be entitled to draw upon the fund provided by the auditing board of said city as provided in section one of this act.

R. S., 9th ed., pp. 2730-1. L. 1887, ch. 720, is repealed by L. 1896, ch. 376.

R. S., 9th ed., p. 2738. L. 1888, ch. 451, is repealed by L. 1896, ch. 545.

R. S., 9th ed., p. 2739. L. 1888, ch. 452, § 3, is amended to read as follows:

§ 3. The county of Richmond and the village of White Plains, in the county of Westchester, are hereby exempted from the provisions of this act. [*Thus am. by L.* 1893, *ch.* 617; *L.* 1895, *ch.* 113, *and L.* 1896, *ch.* 166, *taking effect March* 31, 1896.]

R. S., 9th ed., pp. 2742-3. L. 1888, ch. 581, is repealed by L. 1896, ch. 376.

R. S., 9th ed., p. 2746. L. 1889, ch. 42, is repealed by L. 1896, ch. 547.

R. S., 9th ed., p. 2747. L. 1889, ch. 136, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2747-8. L. 1889, ch. 191, is repealed by L. 1896, ch. 906.

R. S., 9th ed., pp. 2748-2756. L. 1889, ch. 283, is repealed by L. 1896, ch. 545.

R. S., 9th ed., pp. 2764-7. L. 1889, ch. 375, §§ 7 and 10, are amended to read as follows:

§ 7. The proportion of the expenses of constructing such sewer specified in said resolution so published as aforesaid to be borne by the lands specially benefited thereby shall be apportioned upon the owner or owners of the several lots or parcels of land within the area of local assessment as aforesaid, in proportion as nearly as may be to the benefits and advantages which each lot or parcel will receive thereby, and a ratio of such benefits shall be thereupon established, and such apportionment and ratio shall be binding upon such owner or owners and shall be a lien upon such lands. No such apportionment shall be made without at least six days' notice of the time and place of making the same given to each of such land owners, whose resi-

dence is known, which notice shall be served personally by delivering a written copy thereof to each of such persons who can with reasonable diligence be found in said village, or otherwise, by mail addressed to the last known post-office address of such person. After the apportionment hereinbefore provided for shall be completed, the same, or a copy thereof, shall be left with the village clerk, and remain for a period of ten days. The said board of sewer commissioners shall, after they have delivered such apportionment to said village clerk aforesaid, give public notice by posting the same in at least three of the most public places in such village, stating that such apportionment has been made and completed, and the officer to whom the same shall have been delivered, and the place where the same shall be open to public inspection for ten days thereafter. Any person who may feel aggrieved by said apportionment may, before said ten days' notice shall expire, appeal therefrom to the county judge of the county in which such village is situated, by serving at least ten days' notice of such appeal on the president or clerk of the board of sewer commissioners, and the said county judge shall thereupon appoint three disinterested freeholders of said village, not residents of such area of local assessment, as commissioners to review such apportionment, who shall examine the same and all the lots and real estate upon which the same is made and fix and determine the apportionment thereon, and their determination shall be final and conclusive. The fees of the commissioners so appointed by the county judge, not exceeding five dollars per day, shall be paid as an ordinary village expenditure in case their determination shall be more favorable to the appellant than the apportionment made by the board of sewer commissioners, otherwise the expense of such commissioners shall be paid by such appellant. [*Thus am. by L.* 1896, *ch.* 409, *taking effect April* 27, 1896.]

§ 10. The board of sewer commissioners may, from time to time, determine to raise a specified sum of money for the payment of the expenses authorized by this act for the construction of such system of sewerage in any village, and may assess the portion of such sum which is to be borne by the benefited district upon the several lots or parcels therein in accordance with the apportionment and ratio made in pursuance of section seven

R. S., 9th ed., pp. 2766-7.

of this act; and the owner of any such lot or parcel may, within ten days after such assessment, pay the amount assessed thereon. At the expiration of such time the board of sewer commissioners may issue its certificates of indebtedness or bonds, and pledge the faith and credit of such village for the payment of such portion of the specified sums as remains unpaid after deducting such payments as may be made by the owners of lots or parcels in the benefited district. Such bonds or certificates of indebtedness shall bear interest at a rate not to exceed five per centum per annum. Such bonds shall be signed by the president and countersigned by the clerk of said board of such village, and shall be made payable at such times as said board of sewer commissioners shall deem best, not exceeding twenty years from the date of the issue thereof, but the same shall not be sold for less than the par value thereof, and shall be numbered consecutively as issued, and a record of the number, amount, rate of interest and time when payable shall be kept by the clerk of the board of sewer commissioners, who shall furnish a copy of such record to the clerk of said village, who shall also keep a record thereof. The said bonds shall, before sale or negotiation thereof, be delivered to the treasurer of said village, who shall have charge of the sale and negotiation thereof, and the proceeds of such sale and of all moneys raised by taxation for sewer purposes shall be credited to a separate fund called the sewer fund of said village. All expenditures authorized to be made by the board of sewer commissioners of any village by virtue of this act shall be paid by the treasurer of said village upon the order of the board of sewer commissioners, signed by the president and countersigned by the clerk thereof. When any installment of the principal or interest on such bonds becomes due, the portion of such principal and interest which is to be borne by the village at large shall be assessed and levied upon the property of such village in the same manner as other village taxes and the portion thereof to be borne by the benefited district, or any part thereof, shall be assessed upon the several lots or parcels of land within such district upon which the assessment was not paid before the issue of such bonds or certificates of indebtedness upon the basis of the original apportionment or ratio established in pursuance of section seven of this act, so that each lot or parcel shall bear

the same proportion of such indebtedness charged upon the benefited district, as if no part of such assessment had been paid, and such amounts shall be a lien upon such lands, to be collected in the same manner as other village taxes are collected. [*Thus am. by L.* 1896, *ch.* 409, *taking effect April* 27, 1896.]

R. S., 9th ed., p. 2771. L. 1889, ch. 382, § 3, is amended to read as follows:

§ 3. The managers of the New York state reformatory at Elmira, and the managing authorities of all the penitentiaries or other penal institutions in this state, are hereby authorized and directed to conduct the labor of prisoners therein, respectively, in like manner and under like restrictions, as labor is authorized by sections ninety-seven and ninety-eight of this act, as hereby amended, to be conducted in state prisons. [*Thus am. by L.* 1896, *ch.* 429, *taking effect January* 1, 1897.]

R. S., 9th ed., p. 2778. L. 1889, ch. 469, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2780. L. 1890, chs. 51 and 125, are repealed by L. 1896, chs. 272 and 548, respectively.

R. S., 9th ed., pp. 2780-8. L. 1890, ch. 126, is repealed by L. 1896, ch. 545.

R. S., 9th ed., pp. 2788-9. L. 1890, ch. 132, is repealed by L. 1896, ch. 545.

R. S., 9th ed., pp. 2790-1. L. 1890, ch. 160, §§ 1, 2, 3 and 6, are amended to read as follows:

§ 1. It shall be lawful to grant and devise real estate, and to give and bequeath personal property to trustees and their successors in trust, for the purpose of creating, continuing and maintaining, according to the terms, conditions and provisions of such grant, gift, devise or bequest, one or more public parks, or a public library, or both such park or parks and library, in any village or town of this state. The number of such trustees shall not be less than three nor more than nine. [*Thus am. by L.* 1892, *ch.* 25, *and L.* 1896, *ch.* 53, *taking effect February* 29, 1896.]

§ 2. Whenever any such grant, gift, devise or bequest shall have been made, such trustees shall thereupon become and be a body politic and corporate with the name which shall have been specified by the donor in making the donation, and with the number of trustees, within the foregoing limits, named by the donor;

R. S., 9th ed., p. 2791.

and such corporation shall have full power to take and hold all property which shall have been and also which shall thereafter be granted, given, devised or bequeathed to it as aforesaid for said uses and purposes, and shall possess the powers and be subject to the provisions and restrictions contained in title three of chapter eighteen of part one of the revised statutes. If no name shall have been specified by the donor as aforesaid, the name of the corporation shall be such as the said trustees shall adopt, certify and file in the county clerk's office of the county in which the interested village or town is located. [*Thus am. by L.* 1896, *ch.* 53, *taking effect February* 29, 1896.]

§ 3. Residents of the interested village or town only shall be eligible as trustees. In case of the death of a trustee or of his resignation, removal from the village or town, removal from office, or inability to discharge the duties of his office, his place shall be deemed to be vacant, and may be filled by the remaining trustees; and, in default of their so making an appointment within three months, the appointment to fill the vacancy shall be made by the supreme court, on the petition of any inhabitant of the interested village or town, and after due notice to the other trustees and to the president of the village or supervisor of the town. Said trustees shall be subject to removal by said court for malfeasance or misfeasance in office, upon such notice and after trial in such manner as said court shall direct. [*Thus am. by L.* 1896, *ch.* 53, *taking effect February* 29, 1896.]

§ 6. All corporations existing under this act, together with their books and vouchers, shall be subject to the visitation and inspection of the justices of the supreme court, or of any person or persons who shall be appointed by the supreme court for that purpose; and it shall be the duty of the trustees or a majority of them, in the month of December in each year, to make and file in the office of the county clerk of the county in which the interested village or town is situate, a certificate under their hands, stating the names of the trustees and officers of such corporation, with an inventory of the property, effects and liabilities thereof, with an affidavit of the truth of such inventory and certificate. Said trustees shall be entitled to such compensation as said court shall fix. Said court shall also have power to control the discretion of said trustees in determining what property may be demised and for how long; also how much money may be

invested and kept invested on interest to produce an income to keep up and maintain the park, parks or libraries, or both; and also in a summary way to determine the reasonableness of any rules and regulations, upon complaint of any inhabitant of the interested village or town, and upon notice to said trustees. [*Thus am. by L.* 1892, *ch.* 25, *and L.* 1896, *ch.* 53, *taking effect February* 29, 1896.]

R. S., 9th ed., pp. 2795-2800. L. 1890, ch. 238, is repealed by L. 1896, ch. 546.

R. S., 9th ed., p. 2800. L. 1890, ch. 243, is repealed by L. 1896, ch. 545.

R. S., 9th ed., pp. 2812-3. L. 1890, ch. 420, is repealed by L. 1896, ch. 225.

R. S., 9th ed., pp. 2813-5. L. 1890, ch. 437, is repealed by L. 1896, chs. 376 and 955.

R. S., 9th ed., pp. 2815-2823. L. 1890, ch. 475, is repealed by L. 1896, ch. 547.

R. S., 9th ed., p. 2827. L. 1891, chs. 51 and 87, are repealed by L. 1896, chs. 546 and 548, respectively.

R. S., 9th ed., p. 2828. L. 1891, ch. 119, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2829. L. 1891, ch. 206, is repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2829-30. L. 1891, ch. 211, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2830. L. 1891, ch. 216, is repealed by L. 1896, ch. 546.

R. S., 9th ed., pp. 2834-6. L. 1891, ch. 335, is repealed by L. 1896, ch. 545.

R. S., 9th ed., p. 2836. L. 1891, ch. 354, §§ 3, 4 and 5, are repealed by L. 1896, ch. 548.

R. S., 9th ed., pp. 2838-9. L. 1891, ch. 372, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2842. L. 1892, ch. 214, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 2844. L. 1892, ch. 255, is amended by L. 1893, ch. 79, and L. 1896, ch. 309, taking effect April 17, 1896, to read as follows:

§ 1. It shall be lawful for the town board of any town in this state to contract for the lighting of the streets, avenues, high-

ways, public places and public buildings therein, outside of the corporate limits of any incorporated village in said town, upon such terms and for such time or period not exceeding ten years, as the town board may deem proper or expedient, and for the payment of the expenses thereof may establish one or more lamps or lighting districts therein. It shall be lawful for the town boards of two or more adjoining towns in this state whenever a petition for the establishment of a lamp or lighting district shall cover territory lying in two or more adjoining towns in this state, to contract for the lighting of the streets, avenues, highways, public places and public buildings therein, outside of the corporate limits of any incorporated village in said town upon such terms and for such time, or period not exceeding ten years, as the town boards of two or more adjoining towns in joint session assembled may deem proper or expedient and for the payment of the expenses thereof.

§ 2. No such contract shall be made unless a petition for such lighting signed by not less than twenty-five of the taxable inhabitants of said town, shall be filed with the town clerk of said town. If such district shall lie in two or more adjoining towns, then the petition for such lighting shall be signed by not less than twenty-five of the taxable inhabitants of said towns residing in said district and shall be filed with the town clerk of each of said towns.

§ 3. The town board, or if such district shall lie in two or more adjoining towns, then the town boards of each such town shall cause notice of the same to be published for one week in one or more of the newspapers published in such town or towns, or if no newspaper be published in such town or towns, then by posting said notice in at least six public and conspicuous places in said district of the filing of said petition, and the time and place when the same will be acted upon by said town board, or if such lighting district lies in two or more adjoining towns, then when the same will be acted upon at a joint meeting of the town boards of such towns, to be held in the territory where such district is to be created.

§ 4. The amount of any contract that may be entered into pursuant to the provisions of this act, shall be assessed, levied and collected upon the taxable property in said town or district

in the same manner, at the same time, and by the same officers as the town taxes, charges or expenses of said town are now assessed, levied and collected, and the same shall be paid over by the supervisor to the corporation, company, person or persons furnishing or supplying said light. If the town boards of two or more adjoining towns shall, in joint session, establish a lamp or lighting district in two or more adjoining towns, they shall determine the relative proportion of the expense of such lighting which shall be borne by each of said towns, and the amount of such expense shall be assessed and levied on the taxable property in such lighting district in each of said towns, and collected in the same manner and at the same time, and by the same officers as the town taxes or charges or expenses of the town in which said district is located, are now assessed, levied and collected, and such relative expense shall be paid over by the supervisor of each of said towns to the corporation, company, person or persons furnishing or supplying said light.

R. S., 9th ed., pp. 2845-9. L. 1892, ch. 290, is repealed by L. 1896, ch. 377.

R. S., 9th ed., pp. 2852-3. L. 1892, ch. 360, is repealed by L. 1896, ch. 112.

R. S., 9th ed., pp. 2854-67. L. 1892, ch. 399, is repealed by L. 1896, ch. 908 (the Tax Law); but § 14 is amended by L. 1896, ch. 952, and as amended is probably to be considered an enactment subsequent to L. 1896, ch. 908, by § 33 of the Statutory Construction Law, ante, p. 119. § 14, as amended, reads as follows:

§ 14. Surrogate's and district attorney's assistants in New York city, Erie and Monroe counties.— The comptroller of the city and county of New York shall retain, out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the surrogates in the city and county of New York with an assistant, appointed by said surrogates, who shall be known as the transfer tax assistant, whose salary shall be four thousand dollars a year; a transfer tax clerk, whose salary shall be two thousand four hundred dollars a year; an assistant clerk, whose salary shall be one thousand eight hundred dollars a year, and a recording clerk, whose salary shall be one thousand three hundred dollars a year, said salaries to be paid monthly; and a further sum of money, not exceeding five hundred dollars a year, to be used to pay the expenses

R. S., 9th ed., pp. 2862-3.

of the said surrogates necessarily incurred in the assessment and collection of said tax, said amounts to be paid upon the certificates and requisitions of said surrogates respectively. The comptroller of the city and county of New York shall also retain, out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the district attorney of the city and county of New York with an assistant, appointed by said district attorney, who shall be known as the transfer tax assistant, whose salary shall be three thousand dollars a year; a transfer tax clerk, whose salary shall be two thousand four hundred dollars a year, and a surrogate's process server, whose salary shall be one thousand two hundred dollars a year, said salary to be paid monthly; and a further sum of money, not exceeding five hundred dollars a year, to be used to pay the expenses of the said district attorney for the conduct and prosecution of the proceedings mentioned in section fifteen of this act, said amounts to be paid upon the certificate and requisition of said district attorney. The county treasurer of the county of Erie shall also retain out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the district attorney in the county of Erie with an assistant, appointed by the said district attorney, who shall be known as the transfer tax assistant, whose salary shall be two thousand dollars a year, said salary to be paid monthly. The county treasurer of the county of Monroe shall also retain, out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the surrogate of the county of Monroe with two clerks, to be appointed by said surrogate, and known as transfer tax clerks, and whose salary shall be seven hundred and fifty dollars per year each, payable monthly by the treasurer of the said county upon the certificate of the said surrogate; and also a further sum of money, not exceeding two hundred dollars per year, to be used to pay the expenses of the said surrogate of Monroe county necessarily incurred in the assessment and collection of said tax, and to be paid upon the itemized requisition of the said surrogate. [*Thus am. by L.* 1894, *ch.* 767; *L.* 1895, *chs.* 191 *and* 515; *L.* 1896, *ch.* 952, *taking effect May* 28, 1896.]

R. S., 9th ed., p. 2863. L. 1893, ch. 199, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2867. L. 1892, chs. 401 and 402 are repealed by L. 1896, ch. 112.

R. S., 9th ed., p. 2868. L. 1892, chs. 403, 425 and 463, are repealed by L. 1896, chs. 112, 548 and 908, respectively.

R. S., 9th ed., p. 2869. L. 1892, ch. 477, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2873. L. 1892, ch. 529, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2874. L. 1892, ch. 561, § 2, is amended, and § 3 added, to read as follows:

§ 2. That on and after the passage of this act it shall be unlawful for any person or persons to detain or entrap any Antwerp or homing pigeon, provided, however, that such Antwerp or homing pigeon shall have the name of its owner stamped upon its wing or tail, or wear a ring or seamless leg band with its registered number stamped upon it, and any person or persons so detaining such pigeon or pigeons, shall be guilty of a misdemeanor, and upon conviction thereof, shall, for every such offense, pay a fine of not less than ten nor more than twenty-five dollars. [*Thus am. by L.* 1896, *ch.* 824, *taking effect May* 21, 1896.]

§ 3. That on and after the passage of this act, it shall be unlawful for any person or persons, to remove the ring or seamless leg band with its registered number from any Antwerp or homing pigeon, to which he or they can not prove ownership, and any person or persons removing such a ring or leg band from such pigeon or pigeons shall be guilty of a misdemeanor, and upon conviction thereof shall, for every such offense pay a fine of not less than ten nor more than twenty-five dollars. [*Added by L.* 1896, *ch.* 824, *taking effect May* 21, 1896.]

R. S., 9th ed., p. 2884. L. 1892, ch. 616, is repealed by L. 1896, ch. 547.

R. S., 9th ed., pp. 2884-91. L. 1892, ch. 637, except § 5, is repealed by L. 1896, ch. 546.

R. S., 9th ed., p. 2892. L. 1892, ch. 641, § 5, is amended to read as follows:

§ 5. Any officer, manager, agent or other representative or either of them of any fire insurance company violating any of the provisions or failing to comply with any of the requirements of

this act is guilty of a misdemeanor, and upon complaint made by the superintendent of the insurance department, or any citizen of this state, upon conviction thereof, shall be liable to a fine of not more than fifty dollars for the first offense, and not more than one hundred dollars for each subsequent offense or to imprisonment for not exceeding three months, or both. [*Thus am. by L.* 1896, *ch.* 841, *taking effect May* 22, 1896.]

R. S., 9th ed., p. 2893. L. 1892, ch. 656, is repealed by L. 1896, ch. 376.

R. S., 9th ed., p. 2897. L. 1892, ch. 680, is repealed by L. 1896, ch. 909.

R. S., 9th ed., pp. 2898-9. L. 1892, ch. 698, is repealed by L. 1896, ch. 225.

R. S., 9th ed., pp. 2901-6. L. 1893, ch. 81, is repealed by L. 1896, ch. 545.

R. S., 9th ed., p. 2908. L. 1893, chs. 199 and 207, are repealed by L. 1896, chs. 908 and 547, respectively.

R. S., 9th ed., pp. 2909-12. L. 1893, ch. 214, is repealed by L. 1896, ch. 545.

R. S., 9th ed., p. 2920. L. 1893, ch. 498, is repealed by L. 1896, ch. 908.

R. S., 9th ed., p. 2921. L. 1893, ch. 543, § 2, is amended to read as follows:

§ 2. That from and after the passage of this act, in addition to all freight cars now so equipped, there shall be equipped each year, with the continuous power or air brakes by every company operating a line or lines of railroad within the state, at least ten per centum of all freight cars owned or operated by such companies and used within the state, except certain cars known and designated as "coal jimmies," and that on and after the first day of January, eighteen hundred and ninety-eight, the use of the said "coal jimmies" in any form shall be unlawful within the state, except upon any railroad whose main line is less than fifteen miles in length and whose average grade exceeds two hundred feet to the mile, under a penalty of one hundred dollars for each offense, said penalty to be recovered in an action to be brought by the attorney-general in the name of the people and in the judicial district where the principal office of the company within the state is located. This section shall not be

R. S., 9th ed., pp. 2922-2934.

construed to authorize the interchange of such "coal jimmies" with, and the use thereof upon, railroads of more than fifteen miles in length or whose average grade is less than two hundred feet to the mile. [*Thus am. by L.* 1896, *ch.* 486, *taking effect May* 29, 1896.]

R. S., 9th ed., p. 2922. L. 1893, ch. 544, § 2, is amended to read as follows:

§ 2. That from and after the passage of this act, in addition to such new freight cars, there shall be equipped each year with such couplers, by every company operating a line or lines of railroad within the state, at least twenty per centum of all freight cars owned or operated by such companies, and used within the state, which are not so equipped, except certain cars known and designated as "coal jimmies," and that on and after the first day of January, eighteen hundred and ninety-eight, the use of said "coal jimmies" in any form shall be unlawful within this state, except upon any railroad whose main line is less than fifteen miles in length and whose average grade exceeds two hundred feet to the mile, under penalty of one hundred dollars for each offense, said penalty to be recovered in an action to be brought by the attorney-general, in the name of the people, and in the judicial district where the principal office of the company within the state is located. This section shall not be construed to authorize the interchange of such "coal jimmies" with, and the use therefor upon, railroads of more than fifteen miles in length or whose average grade is less than two hundred feet to the mile. [*Thus am. by L.* 1896, *ch.* 485, *taking effect May* 29, 1896.]

R. S., 9th ed., p. 2929. L. 1893, ch. 599, is repealed by L. 1896, ch. 547.

R. S., 9th ed., pp. 2931-2. L. 1893, ch. 635, is repealed by L. 1896, ch. 546.

R. S., 9th ed., p. 2934. L. 1893, ch. 691, § 2, is amended to read as follows:

§ 2. It shall be unlawful for any corporation owning or operating a brickyard within this state to require employes to work more than ten hours in any one day, or to commence work earlier than seven o'clock in the morning, but overwork for an extra compensation, and work prior to seven o'clock in the morning by agreement between employer and employe is hereby permitted. [*Thus am. by L.* 1896, *ch.* 789, *taking effect May* 20, 1896.]

R. S., 9th ed., pp. 2038–2953.

R. S., 9th ed., pp. 2938-53. L. 1893, ch. 711, is repealed by L. 1896, ch. 908 (the Tax Law); but § 30 is amended by L. 1896, ch. 293, taking effect April 17, 1896, and as so amended is probably to be considered an enactment subsequent to L. 1896, ch. 908, by § 33 of the Statutory Construction Law, ante p. 119. § 30 reads as follows:

§ 30. **When lands to be sold for unpaid taxes.**— Whenever the tax charged on nonresident real estate, not in Richmond county or in a county including a portion of the forest preserve, is returned to the county treasurer, he shall not return the same to the comptroller, but if such tax with interest thereon at the rate of ten per centum per annum, computed from the first day of February, after the same is levied, shall remain unpaid for six months from that date, such county treasurer shall advertise and sell such real estate as herein provided for the payment of such tax and interest and the expense of such sale. The expense of publication of list of lands to be sold, and notices and of conducting the sale shall be a charge on the land sold, and shall be added to the tax and interest.

[Compare with § 150 of the Tax Law, ante, p. 3272.]

R. S., 9th ed., p. 2953. L. 1893, ch. 716, § 3, is added, reading as follows:

§ 3. Every corporation, or officer thereof, that shall make any contract, arrangement or agreement, or shall enter into any combination or conspiracy for the purpose of restraining or preventing competition in the supply or price of any article or commodity in common use in this state, or with intent to restrict or restrain trade or commerce in this state, or that shall attempt or actually conduct any business in this state pursuant to any such contract, arrangement, agreement or combination, wherever the same may be made, or shall in any manner in this state engage or aid in carrying out or executing the agreements contained in any such contract or arrangement, wherever the same may be made, shall be deemed guilty of a misdemeanor. The attorney-general may, in addition to the power now conferred by law, bring an action in the name and in behalf of the people of the state against one or more trustees, directors, managers, or other officers of a corporation, or against any corporation, foreign or domestic, to restrain them or either of them from carrying out

in this state any such contract, combination or business in this state, where such contract, combination or business is threatened, or there is good reason to apprehend that the same may be made. [*Added by L.* 1896, *ch.* 267, *taking effect April* 15, 1896.]

R. S., 9th ed., p. 2961. L. 1894, chs. 294 and 315, are repealed by L. 1896, chs. 112 and 547, respectively.

R. S., 9th ed., pp. 2962-74. L. 1894, ch. 363, is repealed by L. 1896, ch. 546 (State Charities Law); but § 20 is amended by L. 1896, ch. 405, taking effect April 27, 1896, and as so amended is probably to be deemed an enactment subsequent to L. 1896, ch. 546, by § 33 of the Statutory Construction Law. § 20 reads as follows:

§ 20. Sales of products.—All moneys received from time to time from the sale and disposal of manufactured products of the trades and industries of the colony, live stock and the produce of the land, shall be paid into the treasury of the state. The comptroller shall keep a special account with and credit to the colony the sums so paid into the treasury, with annual interest thereon, which moneys shall be set apart for the use of the colony, and subject to the written approval of the state board of charities, certified to the comptroller, may be expended by the board of managers for any purpose authorized by law connected with the colony, and drawn from the treasury in the same manner as is provided for payments under section eighteen of this act, in such sums and at such times as required.

R. S., 9th ed., pp. 2976-8. L. 1894, ch. 436, is repealed by L. 1896, ch. 225.

R. S., 9th ed., pp. 2984-6. L. 1894, ch. 698, is repealed by L. 1896, ch. 931.

R. S., 9th ed., pp. 2988-94. L. 1894, ch. 707, is repealed by L. 1896, ch. 545.

R. S., 9th ed., p. 2995. L. 1894, ch. 713, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 2997-9. L. 1894, ch. 745, is repealed by L. 1896, ch. 201.

R. S., 9th ed., p. 2999. L. 1894, ch. 755, is repealed by L. 1896, ch. 524.

R. S., 9th ed., pp. 2999-3007. L. 1894, ch. 764, §§ 1, 3 and 11, are amended to read as follows:

§ 1. The common council of any city and the town board of any town within this state may adopt the Myers automatic ballot

machine for use at all elections, and thereupon it shall be lawful to use such ballot machines for the purpose of voting for all public officers to be voted for by the voters of such town or city, or any part thereof, and upon all constitutional amendments or propositions, or questions which may lawfully be submitted to such voters, and for registering and counting the ballots at such elections. [*Thus am. by L.* 1895, *ch.* 73, *and L.* 1896, *ch.* 163, *taking effect March* 30, 1896.]

§ 3. **Provisions for equipment of polling places.**— The town board of each town and the common council of each city shall provide for each election necessary polling places, and shall provide for each polling place, at each election, the necessary ballot machines in complete working order, with ballots, ballot captions and counter labels in their proper places therein, and with the dials of the labeled counters set at nine, guard rails, inspectors' table, and other furniture and equipment of such polling place necessary for the lawful conduct of the election thereat, put the inspectors of election in possession thereof and deliver to them the keys of the ballot machine therein, at least forty minutes before the opening of the polls for holding an election. The town board of each town and the common council of each city shall care for the ballot machine, furniture and equipment of each polling place when not in use in elections. [*Thus am. by L.* 1896, *ch.* 163, *taking effect March* 30, 1896.]

§ 11. **Preparation for voting.**— The inspectors of election and the poll clerks shall meet at their respective polling places in each election district forty minutes before the time designated for the opening of the polls therein. The inspectors shall choose one of their number chairman, if not already so chosen and present. They shall there have the ballots, ballot captions, counter labels and instruction cards, and shall break the package thereof, make and post conspicuously, and so as to be accessible, one or more diagram posters, two or more instruction cards, and, if they shall be printed in different languages, at least two in each such language, at said polling place. The diagram posters and instruction cards so posted shall not be taken down, torn, defaced or mutilated at such elections. The chairman shall retain one complete set of ballots, ballot captions and counter labels for use within the ballot machines, if needed.

The inspectors shall then enter the voters' compartment of the ballot machine through the entrance door, and, if not already done, the chairman shall, in the presence of the inspectors, adjust and secure within the frames upon the key-board the ballot captions and ballots in the vertical numbered columns and to the left side of the push-knobs of the same color as the ballots, and arranged in the same order as on the diagram posters. The chairman shall then, in an audible voice, read from the said columns consecutively, beginning with the column number one, the captions and the ballots thereunder, in the order that they appear on the key-board. The inspectors shall see that all the names of the nominees for the same office appear and remain on the same horizontal lines, and that the ballots upon constitutional amendments, or other questions or propositions submitted, are arranged in pairs, successively captioned "for" and "against." The chairman shall then lock the bolt-rod behind the lock-button at the left side of the key-board. The inspectors shall then leave the voters' compartment through the entrance door, and the authorized watchers may then inspect the interior of the voters' compartment, likewise entering and departing through the entrance door, which shall thereupon be closed and locked by the chairman. The chairman shall then fully open the sliding doors of the counter compartment, in the presence of the inspectors and watchers, and, if not already so done, set each dial in every labeled counter at nine, and announce that every counter is so set. The chairman shall then direct the other inspectors to enter the voters' compartment, push in the push-knob of the uppermost ballot in column number one, and read aloud said ballot, whereupon the chairman shall insert in the receptacle of the counter thus indicated its counter label, if not already inserted, and shall audibly repeat the name, and, in substance, say his counter is labeled and that all its dials are set at zero. They shall thus continue until all the push-knobs in column number one have been pushed in. One of the inspectors shall then go out through the exit door, thus releasing the push-knobs. The inspectors shall then re enter the ballot machine, and they shall proceed with the remaining columns in all respects as with column number one. The inspectors

R. S., 9th ed., pp. 3018-3022.

shall then leave the voters' compartment, one going out through the exit door, the others through the entrance door. They shall all then see that the counter labels are in the same relative position opposite their respective ballots, and that all the dials stand at zero, and each of them shall announce that all dials stand at zero. The chairman shall then adjust the public counter at zero. The counter compartment shall then be locked. [*Thus am. by L.* 1896, *ch.* 163, *taking effect March* 30, 1896.]

R. S., 9th ed., pp. 3013-4. L. 1895, ch. 13, is repealed by L. 1896, ch. 546.

R. S., 9th ed., pp. 3014-7. L. 1895, ch. 38, except § 9, is repealed by L. 1896, ch. 546.

R. S., 9th ed., pp. 3018-3020. L. 1895, ch. 59, is repealed by L. 1896, ch. 546.

R. S., 9th ed., pp. 3022-4. L. 1895, ch. 79, § § 4 and 5, are amended to read as follows :

§ 4. All the work herein specified to be done shall be done by contract entered into by the superintendent of public works on the part of the state, after being advertised in the state paper ten successive days, not including Sundays, and in such other newspapers or journals and for such period of time or number of insertions as the superintendent of public works may select or deem necessary, and shall be let to the lowest responsible bidder giving such security as the superintendent of public works may require and approve, but in no case shall the amount of any one contract exceed the sum of five hundred thousand dollars. None of the work called for by this act shall be contracted for until the state engineer shall have ascertained with all practicable accuracy, the quantity of embankment, excavation, masonry, the quantity and quality of all materials to be used and all other items of work to be placed under contract, and a statement thereof, with the maps, plans and specifications, corresponding to those adopted by the canal board, and on file in the office of the state engineer, is publicly exhibited to every person proposing or desiring to make a proposal for such work. The quantities contained in such statement shall be used in determining the cost of the work, according to the different proposals received, and when the contracts for any such work are awarded, every such state-

ment, with such maps, plans and specifications and all other papers relating to the work advertised and which are necessary to identify the plan and extent of the work embraced in such contracts, shall be filed in the office of the state engineer, with the certificate of the state division or resident engineer, stating the time and place of their exhibition. No alterations shall be made in such map, plan, or specification or the plan of any work under contract during its progress, except with the consent and approval of the superintendent of public works and the state engineer, nor unless a description of such alteration and such approval be in writing and signed by the parties making the same, and a copy thereof filed in the office of the state engineer. No change of plan which shall increase the expense of any such work or create any claim against the state for damage arising therefrom shall be made, unless a written statement, setting forth the objects of the change and the expense thereof, is submitted to the canal board, and their assent thereto at a meeting when the state engineer was present, is obtained. The superintendent of public works may at any time before entering into contract for the performance of any part of the said work, and after the bids are opened, cancel all of the bids received for the said work and readvertise and relet the same in the manner above described; he may, also, at any time, with the concurrence of the canal board or a majority thereof, suspend any contract while the work is in progress if, in his judgment the work is not being performed to the best interests of the state, and may complete the same in such a manner as will be to the best advantage of the state, and the cost of completing the said contract shall be paid by the contractor failing to perform the work. [*Thus am. by L.* 1896, *ch.* 791, *taking effect May* 20, 1896.]

§ 5. The superintendent of public works may, from time to time, upon the certificate of the state engineer and surveyor, pay to the contractor or contractors a sum not exceeding ninety per cent. of the value of the work performed, and such certificate of the state engineer must state the amount of work performed and its total value, but in all cases not less than ten per cent. of the estimate thus certified must be retained until the contract

R. S., 9th ed.. pp. 3082, 3087.

is completed and approved by the state engineer and the superintendent of public works. [*Thus am. by L.* 1896, *ch.* 794, *taking effect May* 20, 1896.]

R. S., 9th ed., p. 3032. L. 1895, ch. 326, § 1, is amended to read as follows:

§ 1. In any county of this state containing a city of more than twenty-five thousand inhabitants according to the last enumeration taken by the state, any three or more persons may organize and become a corporation, for the purpose of aiding such persons as shall be deemed in need of pecuniary assistance, by loans of money at interest, not exceeding two hundred dollars to any one person, upon a pledge or mortgage of personal property by making, signing, acknowledging and filing a certificate, in the form prescribed by the business corporation law, and by filing a bond in an amount equal to one-tenth of its capital stock, but not less than the sum of five thousand dollars with the superintendent of the banking department, with sufficient sureties, to be approved by him for the faithful observance of all general provisions of law, regulating business corporations within the state of New York, and the provisions of this act; and thereupon the persons who shall have signed the said certificate, and their associates and their successors, shall be a corporation of the names stated in said certificate. [*Thus am. by L.* 1895, *ch.* 706, *and L.* 1896, *ch.* 206, *taking effect April* 4, 1896.]

[L. 1896, ch. 206, § 2. "This act shall not apply to the counties of Monroe and Westchester."]

R. S., 9th ed., pp. 3037-45. L. 1895, ch. 384, §§ 1, 7, 10, 12 and 13 are amended by L. 1896, ch. 502, taking effect May 11, 1896, to read as follows:

§ 1. Definitions; proceedings, how instituted.— The term "drain" when used in this act, includes a ditch, or other channel for the free passage of water. The term dyke means a bank of earth or other material for the exclusion of water. A person owning agricultural lands within this state may institute proceedings for the drainage of such lands or the protection thereof from overflow, by the construction and maintenance of a drain or dyke, on the lands of another person, or the use of mechanical devices, if the lands to be affected are in more than one county,

by presenting a verified petition to a special term of the supreme court of the district where the lands, or a part thereof are situated; or if in any one county, to a special term of the supreme court of the district, or to the county court of the county, in which such lands are located, setting forth a general description of the lands to be drained or protected, the names and places of residence of the owners of all lands affected by the proceeding, so far as the same can with reasonable diligence be ascertained, and a prayer for the appointment of three commissioners. If the name or place of residence of an owner can not be so ascertained, that fact shall be stated with a specific statement of the extent of the inquiry made to ascertain such name or place of residence.

§ 7. **Proceedings and determination of commissioners.**— Whenever the commissioners meet, except by appointment of the court, or pursuant to adjournment, they shall cause at least eight days' notice of such meeting to be given to the persons whose lands are to be affected by the proceedings or their agents or attorneys, in the manner provided by section two of this act. They shall view the premises described in the petition, hear the proofs and allegations of the parties, and reduce the proceedings and testimony taken by them, if any, to writing, and after the testimony is closed, they, or a majority of them, shall, without unnecessary delay, determine whether it is necessary that a drain be opened through, or a dyke erected upon, lands belonging to a person other than the petitioner, or that mechanical devices be constructed or used. Within thirty days after such hearing, the commissioners shall file in the office of the county clerk of the county where their oath of office is filed, their determination, signed by at least a majority of them, and the testimony and proceedings taken before them. If the lands are situated in more than one county, they shall cause a duplicate of such determination to be filed in the county clerk's office of each county in which a part of such land is situated. They shall cause a notice of such filing to be published once in each week for two consecutive weeks in a newspaper published in a town in which such lands or part thereof are situated, or if there be no such newspaper, in a newspaper published at a place nearest to such lands.

R. S., 9th ed., pp. 3041-3.

§ 10. Construction of improvement; acquisition of easements.—Such drains may be opened, or such dykes or mechanical devices constructed, by the petitioner and the owners of the lands at their own expense, in accordance with the maps, if any, filed as described by the last preceding section, with the approval and to the satisfaction, of the commissioners. If not so done, the commissioners may, on request of the petitioner, cause such work to be done in such manner as they may deen best. If the petitioners, or commissioners, and the owners of the lands, through which such drain is proposed to be opened, or on which such dyke is proposed to be constructed, are unable to agree on the compensation and damages which such owners are to receive by reason of the construction and maintenance of such drain or dyke, such commissioners shall meet for the purpose of determining the amount of such compensation and damages, and for assessing the same upon the lands to be benefited by such improvements. At least eight days' notice of such meeting shall be given, in the manner provided by section two of this act to the persons whose lands are to be affected by the proceeding, or their agents or attorneys. At such meeting they shall hear all persons who desire to be heard in reference to the amount of such compensation and damages, and the assessment thereof. In assessing the damages which may be incurred, such commissioners may take into account any benefits which may accrue to the owners of such lands by reason of the construction of such drain or dyke on their lands, and may deduct the amount of such benefit from the total compensation which the owners of such land shall be entitled to receive for damages sustained by the construction and maintenance of such drain or dyke. They shall assess the amount of such damages and the expenses of draining or protecting such land, to be estimated by them, as the case may be, upon the several tracts of land to be benefited by such improvements in proportion to the amount of benefit to be received by each. They shall cause notice to be given to the person whose lands are affected or their agents or attorneys, of a place at which such assessment will be opened for inspection, and of a time and place at which such commissioners will meet for the purpose of hearing any persons conceiving themselves aggrieved by such assessment, and of correcting the same. Upon

R. S., 9th ed., pp. 1043-4.

the correction of such assessment, the commissioners shall file in each office in which their determination of the necessity of drainage or protecting such lands is filed, a copy of such assessment, and of the time and manner of payment thereof, certified by them. They shall cause notice to be given to each person whose lands are assessed by them, or to his agent or attorney, to pay the assessment on such land; which notice shall state the time and place of filing such determination. The notice shall be personally served on each person whose land is so assessed, when he can with due diligence be found in the county in which such lands or a part thereof are situated. If not so found, the notice may be served by delivering it to some person of suitable age and discretion residing upon such lands, directed to the owner thereof, or if no such person be found residing thereon by depositing the notice in the post-office, duly inclosed in an envelope and directed to the owner or occupant at his last known place of residence, with the postage prepaid, and by filing a copy thereof in the office of the clerk of each county in which such premises are located. But no easement shall be acquired in any such land until full compensation is made to the owner or owners thereof as determined by the commissioners under the provisions of this act; and in the meantime no work of construction or improvement shall be performed thereon without the owner's consent.

§ 12. **Payment of assessments.**— Within sixty days after the filing of the assessment, if no appeal is taken therefrom, and within sixty days after the entry of a final order of the court confirming such assessment, if an appeal is taken, or within such time as the court shall direct, the amount of such assessment shall be paid to the commissioners or in such manner as the court may direct. If not so paid by any person the commissioners may proceed to collect the same in the manner provided by section thirteen of this act.

§ 13. **Expense of drainage; compensation of commissioners.**— Each commissioner shall receive for his services three dollars for each day actually employed in the discharge of his duties. They shall keep an accurate account of their expenses incurred in the drainage or protection of such lands. On the completion of such drain, dyke or mechanical device, as provided by this act,

R. S., 9th ed., pp. 3044, 3049.

the commissioners shall make a complete and detailed statement of the compensation which they are entitled to receive together with all the necessary costs and expenses attending the proceedings, which if such proceedings are abandoned, shall be paid by the petitioner, and otherwise any deficiency shall be assessed by them upon the several tracts of land benefited by such improvements in proportion to the benefits which each tract receives. Such estimate or assessment shall be filed by the commissioners in the office of the county clerk of the county in which their oath of office is filed, and a copy thereof shall be served upon the persons whose lands are affected by the proceeding, or their agents or attorneys, personally or by mail, within eight days after the filing thereof. At any time not less than eight days after the service of such notice, any person interested in the proceeding, on giving notice to the commissioners and other persons who have appeared in the proceeding, or the commissioners, on giving notice to such other persons, may apply to the court in which such proceeding was instituted for an order directing the entry of a judgment or judgments for such costs and expenses. The court after hearing the persons appearing and desiring to be heard may review such assessment and modify the same, and if the proceeding has been abandoned by the petitioner may, in its discretion, allow costs to the persons whose lands would have been affected by such proceeding, and may direct a judgment or judgments be entered against the petitioner or the owners of such lands accordingly. Such a judgment upon being docketed in the county clerk's office, shall become a lien upon the real property affected by the proceedings, and may be enforced in the manner provided by the code of civil procedure for the enforcement of judgments which are a lien upon real property.

R. S., 9th ed., pp. 3049-50. L. 1895, ch. 518, §§ 1-3, 6, 8-9, are amended by L. 1896, ch. 672, taking effect July 1, 1896, to read as follows:

§ 1. No employe shall be required, permitted or suffered to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter workday on the last day of the week, nor more hours in

any one week than will make an average of ten hours per day for the whole number of days in which such person shall so work during such week.

§ 2. All buildings or rooms occupied as biscuit, bread, pie or cake bakeries shall be drained and plumbed in a manner to conduce to the proper and healthful sanitary condition thereof, and constructed with air shafts, windows or ventilating pipes sufficient to insure ventilation, as the factory inspector or any of his deputies shall direct. No cellar or basement not now used for a bakery shall hereafter be occupied and used as a bakery, unless the proprietor shall have previously complied with the sanitary provisions of this act.

§ 3. Every room used for the manufacture of flour or meal food products shall be at least eight feet in height and shall have, if deemed necessary by the factory inspector, an impermeable floor constructed of cement or of tiles laid in cement, with an additional flooring, or of wood properly saturated with linseed oil. The side walls of such rooms shall be plastered or wainscoted, and if required by the factory inspector or a deputy factory inspector, the side walls and ceiling shall be whitewashed at least once in three months, and the woodwork of such walls shall be painted when required by such inspector or deputy. The furniture and utensils in such rooms shall be so arranged that the furniture and floor may at all times be kept in a proper and healthful sanitary and clean condition. No domestic animal, except cats, shall be allowed to remain in a room used as a biscuit, bread, pie or cake bakery, or any room in such bakery where flour or meal food products are stored.

§ 6. The sleeping places for the persons employed in a bakery shall be kept separate from the room or rooms where flour or meal food products are manufactured or stored, and the factory inspector or a deputy factory inspector may inspect such sleeping places if they are on the same floor as the bakery, and order them cleaned or changed in compliance with sanitary principles.

§ 8. For the purpose of enforcing this act and of chapter four hundred and nine of the laws of eighteen hundred and eighty-six and acts amendatory thereof, the factory inspector may appoint six deputies, each of whom shall receive an annual salary of one thousand two hundred dollars, together with his neces-

R. S., 9th ed., pp. 3050-6.

sary traveling and other expenses incurred in discharging the duties of his office, payable monthly by the treasurer, on the warrant of the comptroller, upon proper vouchers approved by the factory inspector. Under the direction of the factory inspector such deputies shall inspect all bakeries and see that the provisions of this act and of chapter four hundred and nine of the laws of eighteen hundred and eighty-six, and the acts amendatory thereof, are observed therein. Such deputies shall have all the powers and duties of the deputy inspectors, and shall be amenable to the supervision and control of the factory inspector the same as the deputy factory inspectors appointed under chapter four hundred and nine of the laws of eighteen hundred and eighty-six and the acts amendatory thereof. The factory inspector, or a deputy factory inspector authorized by him shall issue a certificate to a person conducting a bakery where such bakery is conducted in compliance with all the provisions of this act.

§ 9. The owner, agent or lessee of any property affected by the provisions of sections two, three or five of this act shall, within sixty days after the service of a notice requiring any alterations to be made in or upon such premises, comply therewith, and such notice shall be in writing and may be served upon such owner, agent or lessee, either personally or by mail, and a notice mailed to the last-known address of such owner, agent or lessee shall be deemed sufficient for the purposes of this act.

R. S., 9th ed., p. 3051. L. 1895, chs. 525 and 531, are repealed by L. 1896, chs. 547 and 272, respectively.

R. S., 9th ed., pp. 3056-7. L. 1895, ch. 553, §§ 3, 4 and 9, are amended by L. 1896, ch. 362, taking effect April 22, 1896, to read as follows:

§ 3. The justices of the appellate division of the supreme court in the first department, now or hereafter appointed, or a majority of them, are authorized to appoint, and at pleasure remove, one deputy clerk and two assistant clerks of the appellate division. The salary of the clerk of said appellate division shall be five thousand dollars per annum, to be paid out of the public treasury of the state; and that of the deputy clerk shall be two thousand five hundred dollars; and that of each of the assistants to the

clerk two thousand dollars per annum, payable by the city and county of New York.

§ 4. The justices of the appellate division of the supreme court in the first department, now or hereafter appointed, or a majority of them, shall appoint, and at pleasure remove, for each part or term of the supreme court in the first judicial district, a special deputy to the clerk of the city and county of New York and all necessary assistants to each of such special deputies, whose duty it shall be to attend each session of the part or term of the supreme court to which he is assigned, and keep the minutes thereof, and to perform such other duties therein as shall be prescribed by the rules made by the said justices of the appellate division in such department; such special deputy clerks and assistants to be subject to the supervision of the said county clerk. The minutes of the part or term of the court to which he is assigned, kept by him, shall be a part of the records of the supreme court, and shall be kept by the said county clerk in his office, the said county clerk to give extracts from such minutes as now prescribed by law. The compensation to be paid to each person so appointed shall be fixed by said appellate division, not to exceed four thousand dollars per annum for the special deputy clerk assigned to part three of the special term, to be known as the special term calendar clerk, and four thousand dollars for the special deputy clerk assigned to part two of the trial term, to be known as the trial term calendar clerk; and not to exceed two thousand five hunded dollars per annum for each of the other special deputy clerks, and one thousand five hundred dollars per annum for each assistant; and shall be so paid by the city and county of New York.

§ 9. The said justices of the appellate division, now or hereafter appointed, or a majority of them, must appoint, and may at pleasure remove, a stenographer for each part or term of the supreme court; and one typewriter and three stenographers, either male or female, for the appellate division of the first department. Each stenographer so appointed must attend the sittings of the term or part to which he or she is assigned, or the sitting of such other term or part of said court as directed by the presiding justice of the appellate division, and shall receive the same compensation now paid to the stenographers of

R. S., 9th ed., pp. 3062, 3065.

the supreme court. The salary or compensation to be paid to such typewriter shall be fixed by said justices of the appellate division, not to exceed one thousand five hundred dollars per annum, and shall be paid by the city and county of New York.

R. S., 9th ed., p. 3062. L. 1895, ch. 558, is repealed by L. 1896, ch. 908.

R. S., 9th ed., pp. 3065-70. L. 1895, ch. 570, §§ 5, 8, 12, 14 and 18, are amended by L. 1896, ch. 380, taking effect April 23, 1896, to read as follows:

§ 5. There shall hereafter be a state racing commission. Within ten days after this act takes effect the governor shall appoint three persons to be members of such commission, who shall hold office for the term of five years, no two of whom shall be members of the same racing association. They shall receive no compensation for their services but shall be paid their necessary traveling and other expenses. Such commission shall appoint a secretary, who shall serve during their pleasure, whose duty it shall be to keep a full and faithful record of the proceedings of such commission, preserve at the general office of such commission all books, maps, documents and papers entrusted to his care, prepare for service such papers and notices as may be required of him by the commission, and perform such other duties as the commission may prescribe. He shall have the power, under the direction of the commission to issue subpoenas for witnesses and to administer oaths in all cases pertaining to the duties of his office. The total annual expenses of the state racing commission, including the salary of the secretary, shall not exceed the sum of five thousand dollars. Such expenses shall be paid by the several racing or steeplechase corporations or associations, owning or operating such race tracks, to be apportioned by the comptroller, who shall, on or before the first day of December in each year, assess upon each of such corporations or associations its just proportion of such expenses, and such assessment shall be collected in the manner provided by law for the collection of taxes upon corporations. Such commission shall annually make a full report to the legislature of its proceedings for the year ending with the first day of the preceding December, and such suggestions and recommendations as it shall deem desirable.

§ 8. Any trotting association, incorporated under the laws of the state of New York, and any state, county or other fair association shall be entitled to the privileges conferred by section three of this act upon filing in the offices wherein its certificates of incorporation are filed, a certificate which shall set forth its intention to avail itself of such privileges; and any such trotting association, or state, county or other fair association shall not be required to obtain any license or file any other certificate. State, county and other fair associations entitled to conduct trotting races under the provisions of this act may also conduct running races in connection therewith, under the same provisions, and the provisions of this act requiring a race track to be of specified dimensions shall not apply to such association; but no running races shall be conducted for more than five days on any track or grounds, unless the license of the state racing commission therefor is first obtained.

§ 12. A tax of five per centum upon the gross receipts of every corporation exercising the privileges conferred by section three of this act, shall be annually paid by such corporation or association to the comptroller of the state of New York, within fifteen days after the first day of December in each year to be appropriated and distributed as provided by chapter eight hundred and twenty of the laws of eighteen hundred and ninety-five and the acts amendatory thereof, but nothing herein contained shall require such tax to be paid by any state, county or other fair association organized and in active operation as such prior to the passage of chapter five hundred and seventy of the laws of eighteen hundred and ninety-five, or which is entitled to share in the distribution of moneys for agricultural purposes as provided by chapter eight hundred and twenty of the laws of eighteen hundred and ninety-five or acts amendatory thereof.

§ 14. Whenever any such corporation or association shall neglect or refuse to make such report at the time prescibed in this act, or whenever the report is unsatisfactory to the comptroller, or whenever in the judgment of the comptroller, the interests of the state would be promoted thereby the comptroller is authorized to examine or cause to be examined its books and records, and to fix and determine the amount of tax due in pursuance of the provisions of this act, either from such books and records, or

from any other data in his possession which shall be satisfactory to him, and to settle and account for such tax, together with the expenses of such examination against such association. In case of the nonpayment of the amount of tax so ascertained to be due, together with the expenses of such examination, for a period of thirty days after notice to any such corporation or association so in default, it shall be liable in addition thereto to pay to the state for each such omission or failure, a sum not less than five hundred nor more than one thousand dollars; the same may be sued for and recovered in the name of the people of the state in any court having competent jurisdiction, by the attorney-general at the instance of the comptroller. The comptroller is also authorized and required to report any failure of any such corporation or association to make such report and to pay its tax to the governor, who, if he shall be satisfied that such failure was intentional, shall thereupon direct the attorney-general to take proceedings in the name of the people of the state to declare the charter of such corporation or association to be forfeited and its charter privileges at an end, and for such intentional failure the charter privileges, corporate rights and franchises of every such corporation or association shall cease, end and be determined.

§ 18. No corporation or association conducting a running or trotting race meeting in pursuance of this act shall, under any guise or pretense, directly or indirectly, exact or accept any compensation from any person for the privilege of making and recording bets or wagers on the result of a race on the track of such corporation or association, or, directly or indirectly, share or participate in any such bet or wager. Any officer or agent of a corporation or association violating this section, or aiding or abetting the violation thereof, shall be guilty of a misdemeanor. But the charging of increased or additional entrance fees for admission to any special portion or portions of the grounds of such corporation or association, unless pool-selling, book-making, or other acts punishable by fine or imprisonment be thereon authorized or knowingly permitted, shall not be deemed the exaction or acceptance of compensation as aforesaid, nor as the sharing or participation in any bet or wager.

R. S., 9th ed., p. 3074. L. 1895, ch. 600, § 3, is amended to read as follows:

§ 3. All tests of guns, of whatever kind required for the service, shall be made at such place or places in the state as the board of examiners may find most convenient, under such provisions and regulations as may be prescribed by the adjutant-general; and all tests shall be confined to arms of American invention and manufacture. After thorough and satisfactory test of any pattern of arm shall have been completed, the said board of examiners shall submit to the governor the result of such test, their findings and recommendations, and upon the approval of such report by the governor, the duties of said board of examiners shall cease and determine, and the particular weapon recommended by said board shall be adopted for the use of the military and naval forces of the state. [*Thus am. by L.* 1896, *ch.* 197, *taking effect April* 4, 1896.]

R. S., 9th ed., pp. 3078-82. L. 1895, ch. 628, is all repealed except § § 2 and 3, by L. 1896, ch. 545.

R. S., 9th ed., pp. 3091-7. L. 1895, ch. 771, is repealed by L. 1896, ch. 546.

R. S., 9th ed., p. 3098. L. 1895, ch. 774, is repealed by L. 1896, ch. 548.

R. S., 9th ed., p. 3103. L. 1895, ch. 818, § 1, is amended to read as follows:

§ 1. The comptroller shall, as soon as may be practicable, sell at public or private sale, or otherwise convert into cash the securities, real estate or other property in which the fund known as the chancery fund is invested, at their fair market value; and to execute good and sufficient deeds of conveyance of said real estate to the purchasers thereof, and the proceeds of such sale or conversion shall, as received, be credited to the general fund and deemed a part thereof, and all moneys on deposit to the credit of such fund, or which may be hereafter received for interest or otherwise, shall, in like manner, be credited to the general fund and be deemed a part thereof. The treasurer shall pay from such fund the amount due any person, as owner of a portion thereof, upon the warrant of the comptroller. The comptroller shall draw his warrant for such sum upon presentation to

R. S., 9th ed., pp. 3119-20.

him of an order made by a court of competent jurisdiction after due notice to said comptroller. [*Thus am. by L.* 1896, *ch.* 191, *taking effect April* 1, 1896.]

R. S., 9th ed., pp. 3119-20. L. 1895, ch. 1026, §§ 4 and 8, are amended, and § 7a added, to read as follows:

§ 4. The said commission shall annually elect one of its members as the president of the commission, and shall also annually elect a secretary, who shall keep a record of all its proceedings, and perform such duties as may be required of him by the commission and by law, and he shall receive a salary of three thousand dollars per annum; and the said commission may also appoint as employes and assistants of said commission, and of the commissioners, in the performance of their official duties, a clerk, at an annual salary of one thousand five hundred dollars, a stenographer and a general office assistant, at an annual salary of one thousand dollars each, and remove each and appoint a successor at any time; and the said commission is authorized to make rules and regulations for its meetings and the transaction of its business and also as to the manner in which reports to it shall be made, and all matters shall be presented before it. [*Thus am. by L.* 1896, *ch.* 430, *taking effect May* 4, 1896.]

§ 7a. The said commission shall have the further duty and authority to require the proper officials of the state and the political divisions thereof, and of all public institutions of the state, and political divisions thereof, supported wholly or in part by the state, or any political division thereof, to furnish to said commission, annually, estimates for such ensuing year of the amount of labor to be required by each, and of the articles which may be manufactured in penal institutions, required to be purchased for the use of the state or the political divisions, or said institutions in their charge or under their management. [*Added by L.* 1896, *ch.* 430, *taking effect May* 4, 1896.]

§ 8. The said commissioners shall receive as compensation for their time and services the sum of ten dollars per day for each commissioner for the time actually employed in attending regular meetings of the commission, and in the performance of all official duties by authority or direction of the commission. But in no event shall the total annual compensation of said commission exceed the sum of four thousand dollars. The actual expenses of each one of them while engaged in the performance

R. S., 9th ed., p. 8121.

of official duties shall be paid quarterly by the treasurer on the warrant of the comptroller, and the salary and expenses of the secretary and the other stated employes of the commission shall be paid monthly in like manner. [*Thus am. by L.* 1896, *ch.* 430, *taking effect May* 4, 1896.]

R. S., 9th ed., p. 3121. L. 1895, ch. 1027, § 1, is amended to read as follows:

§ 1. Every railroad corporation operating a railroad in this state, the line or lines of which are more than one hundred miles in length, and which is authorized by law to charge a maximum fare of more than two cents per mile, and not more than three cents per mile, and which does charge a maximum fare of more than two cents per mile, shall issue mileage books having one thousand coupons attached thereto, entitling the holder thereof, upon complying with the conditions hereof, to travel one thousand miles on the line or lines of such railroad, for which the corporation may charge a sum not to exceed two cents per mile. Such mileage books shall be kept for sale by such corporation at every ticket office of such corporation in an incorporated village or city and shall be issued immediately upon application therefor. The holder of any such mileage book shall be entitled, upon surrendering, at any ticket office on the line or lines of such railroad, coupons equal in number to the number of miles which he or any member of his family or firm, or a salesman of such firm, wishes to travel on the line or lines of such railroad, to a mileage exchange ticket therefor. Such mileage exchange ticket shall entitle the holder thereof without producing the mileage book upon which such exchange ticket was issued, to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corporation would entitle him. Such mileage books shall be good until all coupons attached thereto have been used. Any railroad corporation which shall refuse to issue a mileage book as provided by this section, or, in violation hereof, to accept such mileage book for transportation, shall forfeit fifty dollars, to be recovered by the party to which such refusal is made; but no action can be maintained therefor unless commenced within one year after the cause of action accrues. [*Thus am. by L.* 1896, *ch.* 835, *taking effect May* 22, 1896.]

R. S., 9th ed., p. 3121.

R. S., 9th ed., p. 3121. L. 1895, ch. 1031, § 2, is amended to read as follows:

§ 2. Towards the maintenance and support of these school* and classes established pursuant to this act, or heretofore established and maintained for similar purposes, and whose requirements for admission and whose course of studies are made with the approval of the state superintendent of public instruction, and under whose direction such classes shall be conducted, the said superintendent is hereby authorized and directed in each year to set apart, to apportion, and to pay from the free school fund one dollar for each week of instruction of each pupil, and the sum of forty thousand dollars is hereby appropriated to carry out the provisions of this act until the close of the school year of eighteen hundred and ninety-seven. Such apportionment and payment shall be made upon the report of the local superintendent of schools, filed with the state superintendent of public instruction, who shall draw his warrant upon the state treasurer for the amount apportioned. [*Thus am. by L.* 1896, *ch.* 646, *taking effect May* 13, 1896.]

*So in the original.

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8. Floating elevators to be assigned places on, L. 1896, ch. 881, p. 3692.

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CANCELLATION.
1. Of real estate mortgages by record of satisfaction executed and acknowledged, Real Prop. L., § 270, p. 3602.

CANNED GOODS.
To be labeled with name of packer and as to quality of articles; soaked goods to be so labeled; penalty for violation, Dom. Com. L., § 30, p. 3520; Pen. Code, § 407, sub. 5, p. 3733. False labeling forbidden, §§ 438, 438a.

CANS.
Of oysters to be branded with quantity; not more than one-quarter to be liquid, Dom. Com. L., § 31, p. 3520. False brand forbidden, Pen. Code, §§ 438, 438a. Unlawful detention of milk cans marked with owner's name; search warrant, Dom. Com. L., § 29, p. 3518; L. 1887, ch. 401, pp. 3939-43.

CAPITOL.
1. Trustees of public buildings to assign rooms to state com'r of excise, Liq. Tax L., § 7, p. 3463. To state lunacy commission, Insanity L., § 4, p. 3419. To state board of charities, State Char. L., § 7, p. 3324.

CARRIERS.
4. Intemperate persons not to be employed by, Liq. Tax L., § 41, p. 3497; Pen. Code, § 420; High. L., §§ 158-9, p. 716.

CASKS.
For flour and meal, material, capacity; how branded; undermarking tare or counterfeiting brands, penalty, Dom. Com. L., §§ 70-7, pp. 3529-30; Pen. Code, §§ 369-71. Brands on cider vinegar casks, Ag. L., §§ 52-3, pp. 954-5.

CELEBRATIONS.
Mayors of cities of first class may grant temporary permits for erection of booths, arches, etc., for purpose of, L. 1896, ch. 823, p. 3691.

CEMETERIES.
1. Exemption from taxation of personal and real property used for, Tax L., § 4, sub. 7, p. 3216.

CEMETERY CORPORATIONS.
12. Exempt from taxation on personal property and under transfer tax law; also on land used for cemetery purposes, with certain exceptions, Tax L., §§ 4, sub. 7, 220, pp. 3216, 3295.

CERTIFICATE.
1. Of ACKNOWLEDGMENT; to be indorsed upon or attached to instrument; in certain cases must be under seal or authenticated to be recorded or read in evidence, Real Prop. L., §§ 255-6, p. 3597.
3. Of MARRIAGE; by whom to be made; contents; when and where to be filed; certificate or certified copy presumptive evidence, Dom. Rel. L., §§ 14-6, pp. 3614-5.
Liquor Tax Certificate, see Excise, 5.

CERTIORARI.
4. To review action of ASSESSORS; allowed only within 15 days after filing and publication of assessment-roll on petition to judge sup. ct. of same district; return, hearing, costs and appeal, Tax L., §§ 250-5, pp. 3309-11.
5. To review assessment of corporation by COMPTROLLER; allowed only within 30 days after notice of assessment, on 8 days' notice, after deposit of tax and filing undertaking for costs, Tax L., §§ 196-7, pp. 3290-1.
7. To review action of officers refusing to issue or transfer liquor tax certificate, Liq. Tax L., § 28, p. 3484.

CHAIN (SURVEYOR'S).
For measuring land to be 22 yards long, and divided into 100 equal links, Dom. Com. L., § 3, p. 3507. Surveyor's testimony as to measurement or survey not evidence without proof, if required, as to conformity of chain used with state standard, L. 1851, ch. 134, § 33, p. 2120.

CHARITABLE CORPORATIONS.
Exempt from transfer tax law, and from taxation on real and personal property, Tax L., §§ 220, 4 sub. 7, pp. 3295, 3216.

CHARITIES AID ASSOCIATION.
See State Charities Aid Association.

CHARITIES LAW, STATE.
Is ch. 26 of General Laws; L. 1896, ch. 546, pp. 3322-72.

CHATTANOOGA.
Governor to cause monuments at, to be inspected at least every 3 years, L. 1894, ch. 371, §§ 10-11, p. 2975.

CHATTELS.
3. Estates for years, and estates during life of third person after death of grantee or devisee, are CHATTELS REAL. Estates at will or by sufferance are CHATTEL INTERESTS, Real Prop. L., §§ 23-4, p. 3548. Suspension of power of alienation as to chattels real, same as in respect to fee, § 39, p. 3550.

CHILDREN.
1. Parental CUSTODY and GUARDIANSHIP; mother joint guardian with father; either upon death of other may by deed or will dispose of custody and tuition of unmarried child under 21; when disposition takes effect, Dom. Rel. L., § 51, p. 3619; Civ. Code, §§ 2851-60; powers and duties of guardian so appointed, Dom. Rel. L., § 52,

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p. 3620. Priority of right of father, mother and other relatives to be GUARDIAN in SOCAGE, § 50, p. 3619; action against such guardian for waste, Civ. Code, § 1653. Duties and liabilities of GENERAL GUARDIAN, Dom. Rel. L., § 53, p. 3620. Appointment, supervision and control by surrogate's court of general guardian, Civ. Code, §§ 2821-50. Guardianship of indigent child may be committed to incorporated orphan asylum, L. 1884, ch. 438, p. 2618. In proceedings to apply property of absconding parents to support of children, co. court may appoint guardian ad litem, L. 1878, ch. 304, § 3, p. 2442. (See Guardian, 2.) Custody and MAINTENANCE of children before and after judgment in actions for DIVORCE and separation, Civ. Code, §§ 1751, 1760, 1771-3, 1769. If husband and wife are living separate without divorce, or either has joined Shakers, habeas corpus for child may issue and custody awarded to proper parent, Dom. Rel. L., §§ 40-1, p. 3618. When payment of wages to minor is valid, § 42, p. 3619.

2. Consent of parent abandoning child not necessary for its adoption, Dom. Rel. L., § 61, sub. 3, p. 3622; L. 1884, ch. 438, § 1, p. 2618.

3. ADOPTION of child defined; who may adopt, Dom. Rel. L., § 60, p. 3621. Whose consent necessary, § 61, p. 3622. Proceedings for adoption; order; papers to be filed in co. clerk's office, §§ 62-3, pp. 3622-3. Mutual rights of adopting parent and child, § 64, p. 3623. Adoption from charitable institutions, § 65, p. 3623; L. 1884, ch. 438, § 7, p. 2618ff. Abrogation of adoption; procedure therefor, Dom. Rel. L., §§ 66-8, pp. 3624-6.

6. Advancements by intestate to his children, upon settlement of his estate; value thereof, how determined; when to be set off or deducted, Real Prop. L., §§ 295-6, pp. 3608-9. Illegitimate children do not inherit, except from mother without lawful issue; inheritance from, by line of mother, § 289, p. 3607; are made legitimate by subsequent marriage of parents, Dom. Rel. L., § 18, p. 3615. Posthumous child inherits as if born in lifetime of parent, Real Prop. L., § 292, p. 3608, defeats vesting of estate dependent on death without issue, § 46, p. 3551.

7. Sending messenger boys to prohibited places, Pen. Code, § 292a. Selling or giving liquor to child, Liq. Tax L., § 30, p. 3488; selling cigars or cigarettes to children, Pen. Code, § 290.

8. Children under 12 convicted of a felony, and between 12 and 16 convicted of any crime, boys between 16 and 18 convicted of a misdemeanor; between 16 and 21, convicted of a felony, when sentenced, State Char. L., § 124, p. 3357; Pen. Code, § 701, p. 3736. Vagrant truant, or disorderly children, where committed, Poor L., § 56, p. 3391. Trials of, Pen. Code, § 291, p. 3733.

(As to employment of children in factories, etc., see Employers and Employes.)

CHURCHES.

Sale of liquor near churches prohibited, Liq. Tax L., § 24, p. 3481.

CITIES.

5-6. Mayors and recorders may take acknowledgments, Real Prop. L., § 248, p. 3595; may solemnize marriages, Dom. Rel. L., § 11, p. 3613.

7. Aldermen may solemnize marriages, Dom. Rel. L., § 11, p. 3613.

14. Permits for occupation of streets in cities of first class during exposition, etc., L. 1896, ch. 823, p. 3691.

15. Articles 6 and 7 of tax law not to effect laws relating to sale of real estate for taxes in a city, Tax L., § 158, p. 3275. Rate of excise tax in cities, Liq. Tax L., § 11, p. 3466.

CITIZENS.

1. Entitled to hold real property, Real Prop. L., § 2, p. 3545.

CIVIL CODE.

Amendments of 1896, pp. 3707-31.

CIVIL DAMAGE ACT.

For recovery of damages caused by intoxication, Liq. Tax L., § 39, p. 3496.

CIVIL SERVICE.

Preference of soldiers and sailors, L. 1896, ch. 821, p. 3925.

CLAIMS, BOARD OF.

3. Jurisdiction over claim of county for value of building transferred to state for insane hospital, L. 1896, ch. 481, p. 3677. Over claim of counsel for revision of tax laws, L. 1896, ch. 939.

4. Appeals from, to sup. ct., app. div., L. 1896, ch. 451, pp. 3920-2.

CLERGYMEN.

May solemnize marriages; duties in relation thereto; furnish certificate, etc., Dom. Rel. L., §§ 11-17, pp. 3613-15. Exemption of real property from taxation, Tax L., § 4, sub. 11, p. 3218.

COAL.

Use of soft coal may be prohibited in public institutions by cities of second class, L. 1896, ch. 530, p. 3677.

COLLATERAL INHERITANCE TAX.

Provisions relating to, Tax L., §§ 220-42, pp. 3295-3308.

COLLECTORS.

A. Town collectors.

1. Fees of, Tax L., § 81, p. 3246.

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COLLEGES.

2. Fees of sec'y of state for filing certificate of incorporation not payable unless a stock corporation. If stock corporation, organization tax of one-eighth of one per cent. on capital stock must be paid before filing, Tax L., § 180, p. 3280.

9. Exemptions from taxation, Tax L., § 4, sub. 7, p. 3216; from transfer tax provisions, § 220, p. 3295.

10. Saloon not to be licensed within 200 feet of, Liq. Tax L., § 24, p. 3481.

COLORED PERSONS.

See Discrimination.

COMBINATIONS.

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COMMERCIAL AGENTS.

May take acknowledgments in foreign countries, Real Prop. L., § 257, p. 3597.

COMMERCIAL FERTILIZERS.

See Fertilizers.

COMMISSION MERCHANTS.

Must receipt and account for goods; penalty for neglect, Dom. Com. L., § 39, p. 3523; Pen. Code, § 384d, p. 3733.

COMMISSIONERS IN LUNACY.

1. FILLING and VACATING office. Governor with consent of senate appoints one physician, one lawyer, and one layman, Insanity L., § 3, p. 3418. Are state officers, Pub. Off. L., § 2, p. 325. To be ELIGIBLE must be of full age, resident of state, and citizen of U. S., § 3, p. 325; Insanity L., § 3, p. 3418. (See under Public Officers, convictions which disqualify.) HOLD OVER until successors qualify, Pub. Off. L., § 5, p. 326. OFFICIAL OATH must be taken and filed within 15 days after notice of appointment or office forfeited, but acts valid, §§ 10-20, pp. 328-33; Pen. Code, §§ 42-3; Const. a. 13, § 1, p. 84. TERM of office, six years; SALARIES, Insanity L., § 3, p. 3418. RESIGNATION must be in writing addressed to governor and takes effect on delivery to him, Pub. Off. L., § 21, p. 324. REMOVABLE by senate on recommendation of governor, § 22, p. 335. VACANCY in office, how created and filled, §§ 20, 31, pp. 333, 338. Commissioners in office Jan. 1, 1895, continued for terms for which appointed; additional powers may be conferred, Const. a. 8, § 15, p. 78.

2. POWERS AND DUTIES, generally, Insanity L., §§ 6-9, pp. 3419-21. To divide state into hospital districts; provide for prospective wants of insane, §§ 10, 11, 15, pp. 3421-3. May transfer patients when hospital is overcrowded, § 71, p. 3447. To prescribe form of certificates of lunacy, § 61, p. 3439. To keep records of medical examiners, and of patients; institutions to furnish information to commission, §§ 12-14, pp. 3422-3. May INVESTIGATE the care and treatment of insane; issue compulsory process for attendance of witnesses; require attorney-general or deputy to assist; and with approval of sup. ct. justice order change of treatment, § 72, p. 3447; Civ. Code, §§ 933, 954-7. Recommendations of com'rs as result of visits, to be filed in institutions, Insanity L., § 48, p. 3437. May order discharge of patients improperly detained, § 74, p. 3448. May license PRIVATE ASYLUMS, § 47, p. 3437. Civil actions for damages not to be brought against com'rs without leave of sup. ct. justice, § 46, p. 3436.

3. To have an official seal; may employ clerical assistants, Insanity L., §§ 4-5, p. 3419. To appoint director of pathological institute, § 16, p. 3424. To preserve record of dismissals of officers and employes from hospitals, § 35, sub. 3, p. 3428. To fix salaries of officers and wages of employes, § 38, p. 3431. Shall present to comptroller monthly estimates of expenses; to forward vouchers of monthly expenditures, § 41, p. 3434. Commissioners are members of board to fix price of prison-made goods to state institutions, R. S., p. 3895, § 107.

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COMMISSIONERS OF LAND OFFICE.

1. Speaker of assembly entitled to receive expenses, Pub. Off. L., § 2, p. 392.

2. With three tax commissioners compose board of equalization, Tax L., § 173, p. 3277.

COMMISSIONER OF STATISTICS OF LABOR.

2. To establish free public employment bureaux, L. 1896, ch. 982, pp. 3704-6.

COMMON LAW.

1. Controls descent of property in cases not provided for, Real Prop. L., § 291, p. 3608.

COMPTROLLER.

2. Is ex-officio member of state board of canvassers, Elect. L., § 138, p. 3208.

4. May appoint agents in cities to carry provisions of dom. com. l. into effect, Dom. Com. L., § 54, p. 3526.

7. All papers relating to canals to be deposited in comptroller's office, L. 1833, ch. 56, p. 2012.

8. TAXATION; to determine amount of state tax due from each county and transmit copy to county officers, Tax L., § 173, p. 3277. To charge county treasurer with amount of state tax due from each county; settlement of state taxes with counties, and collection of arrears, §§ 91-2, p. 3250. To purchase at tax sales lands in which state is interested, § 123, p. 3258. Withdraw from sale all lands upon which state has a lien, § 124, p. 3260.

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9. Tax sales; duties in relation to advertising and selling lands for delinquent taxes in forest preserve counties, Tax L., §§ 100, 120-43, pp. 3252, 3257-71.

11. Corporation taxes; duties of comptroller in relation to, Tax L., §§ 180-203, pp. 3279-94.

12. To take part in fixing salaries of commissioners in lunacy, Insanity L., § 3, p. 3418. To revise monthly estimates of expenses of certain institutions, State Charities L., § 41, p. 3332. To examine books of racing associations, L. 1895, ch. 570, § 5, p. 3970.

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Of weights and measures, Dom. Com. L., §§ 2-9, pp. 3507-8.

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Proceedings under, may be taken by state and state boards, L. 1896, ch. 589, § 1, p. 3684; Civ. Code, § 3358, p. 3731; by electric light companies, L. 1896, ch. 446, p. 3673; by historical societies, L. 1896, ch. 681, p. 3918.

CONDITIONAL SALES.

Of cream separators, etc., L. 1896, ch. 601, p. 3926.

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Hours of labor in; sanitary regulations, L. 1896, ch. 672, pp. 3966-8.

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Election of representatives to be held in 1896, and every second year thereafter; notice of vacancy, Elect. L., § 160, p. 3209; when special election for, to be held, § 4, p. 3126.

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1. Age of, for marriage is 18 years, Dom. Rel. L., § 4, p. 3612.

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Is L. 1894, ch. 556, pp. 1497-1620.

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B. Village police constables.

2. Powers and duties; may be compensated by fees or salaries, L. 1896, ch. 457, p. 3911.

C. Powers and duties.

5. To notify district attorney of violations of Liquor Tax L., § 37, p. 3496. To seize boat, etc., violating Fish., G. & F. L., § 189, L. 1896, ch. 383, pp. 905, 3793.

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Constitutional amendments, how submitted to people, Elect. L., §§ 6-7, p. 3128; form of ballot for, § 82, p. 3171; canvass of votes upon, § 111, pp. 3196-7.

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May take acknowledgment, Real Prop. L., § 250, p. 3595.

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3. Contracts in contemplation of marriage, and of married women, Dom. Rel. L., §§ 20-1, p. 3616.

4. Contracts in restraint of trade by apprentice, void, Dom. Rel. L., § 77, p. 3630.

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In prisons prohibited, L. 1896, ch. 429, pp. 3891-7.

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Political, defined, Elect. L., § 50, p. 3154. May make nominations, method of certifying, § 56, pp. 3156-9.

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1. Defined, Real Prop. L., §§ 205, 240, pp. 3577, 3592. Forms of deeds and mortgages, § 223, pp. 3585-8. Construction of covenants therein, §§ 216-23, pp. 3579-88.

2. By whom to be executed, Real Prop. L., §§ 207-8, pp. 3577-8. Between husband and wife, Dom. Rel. L., § 26, p. 3617. By one authorized to revoke former grants is valid, though made before power of revocation vests, Real Prop. L., § 231, p. 3589.

3. Conveyance of lands adversely held is void, but mortgage thereof may be valid, Real Prop. L., § 225, p. 3588. Conveyances with intent to defraud are void, except as against innocent purchasers, §§ 226-9, pp. 3588-9.

4. Effect of conveyances to one party, when consideration is paid by another, Real Prop. L., § 74, p. 3555.

5. Conveyances with power of revocation reserved, void, Real Prop. L., § 231, p. 3589.

6. Effect of conveyance; no covenant for payment of money implied in mortgage; no covenant implied in any conveyance, Real Prop. L., § 214, p. 3579; does not carry more than grantor could convey; against whom it is conclusive; carries entire estate of grantor unless contrary appears, § 210, p. 3578. Conveyance by tenant for life or years, carries tenant's estate, § 212, p. 3579. Effect of conveyance after judgment of foreclosure, Civ. Code, § 1632.

7. Conveyance to be construed so as to carry out intent, Real Prop. L., § 205, p. 3577.

8. Conveyance to wife as jointure is bar to dower, Real Prop. L., § 177, p. 3570.

9. No estate greater than one year can be conveyed unless in writing, Real Prop. L., § 207, p. 3577; takes effect only from delivery, § 209, p. 3578; where to be recorded

and effect thereof, § 241, p. 3593; L. 1896, ch. 572, p. 3593, and note. How execution proved by subscribing witness; how witness compelled to testify, Real Prop. L., §§ 253-4, p. 3596. False certification of records, a felony, Pen. Code, § 162; liability for damages, Real Prop. L., § 277, p. 3604.

11. By comptroller after tax sale in forest preserve county, Tax L., §§ 100, 120, 131, pp. 3252, 3257, 3265.

CONVICTS.

2. Woman over 16, convicted of felony, if sentenced for one year, or more, to be committed to Auburn prison for women, if for less than one year to co. jail, penitentiary or a house of refuge for women, Pen. Code, § 698, p. 3736. (See Children.) How transported to house of refuge, State Char. L., § 149, p. 3366.

6. Convict-made goods to be labeled and branded, L. 1896, ch. 931, p. 3695; penalty for violation, Pen. Code, § 384b, p. 3732.

8. Bertillon method of measurements of, L. 1896, ch. 440, p. 3672.

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(L. 1867, ch. 971, repealed. Must now be incorporated under Bus. Corp. L., see Business Corporations.)

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CORNELL UNIVERSITY.

Trustees, number of, increased, L. 1896, ch. 238, pp. 3904-6.

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Form of acknowledgment of execution of instruments by, Real Prop. L., § 258, p. 3598.

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COUNTY CLERK.

2. Is ex-officio secretary of board of county canvassers, Elect. L., § 130, p. 3200.

4. Fees for services relating to elections by unsalaried clerk, Elect. L., § 18, pp. 3138-40.

5. Records of conveyances, deeds, mortgages, etc., Real Prop. L., § 241; L. 1896, ch. 572, p. 3593, and note.

6. To report to sec'y of state annually before Jan. 1, number of town, city and village clerks entitled to public documents, Leg. L., § 49, p. 353. To give notice to overseer and supt. of poor of location of almshouse, Poor L., § 91, p. 3401. To notify sec'y of state of vacancy in office of congressman, Elect. L., § 160, p. 3209. To publish election notices, §§ 5-7, pp. 3127-8; and nominations, § 61, p. 3162. To provide official ballots, §§ 86-7, pp. 3178-9. To publish and transmit certificates of election to persons elected and to sec'y of state, §§ 136-7, pp. 3206-7. To give notice to person appointed notary public, Ex. L., § 83, p. 383.

7. Duties in regard to recording conveyances; books required; indices to be kept, Real Prop. L., §§ 241, 264-8, pp. 3593, 3601-2; L. 1896, ch. 572, p. 3593.

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2. DUTIES in proceedings for adoption of children, Dom. Rel. L., §§ 62-3, pp. 3622-3.

COUNTY LAW, THE.

Is ch. 18 of General Laws, L. 1892, ch. 686, pp. 593-664.

COUNTY TREASURER.

2. Accounts with comptroller for state taxes; when to be paid, Tax L., § 92, p. 3250. Duty as to funds paid into court, Civ. Code, § 744, p. 3715.

COURTS.

7. Appellate division of supreme court, in third dept., given jurisdiction to hear appeals from state board of claims, L. 1896, ch. 451, p. 3920.

COVENANTS.

Are not implied in conveyance of real estate, Real Prop. L., §§ 214, 216, p. 3579.

CRAIG COLONY.

For epileptics, State Char. L., §§ 100-14, pp. 3345-55.

CRIMINAL CODE.

Amendments of 1896, pp. 3738-42.

CRUELTY; CORPORATIONS FOR PREVENTION OF CRUELTY TO ANIMALS AND CHILDREN.

1. Fee for filing certificate of incorporation with sec'y of state not payable by, but must pay fee for recording, Ex. L., § 26, p. 371.

6. Society for prevention of cruelty to animals may license dogs in certain cities, L. 1896, ch. 448, pp. 3673-5.

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5. Person bottling milk may register trademark; unauthorized use of branded milk cans, Dom. Com. L., § 29, pp. 3518-20; L.

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2. Civil action for damages from intoxication, Liq. Tax L., § 39, p. 3496.

DEAD BODIES.

5. Delivery of cadavers for dissection, when permitted, Pub. H. L., § 207a, pp. 3779-82.

DEAF AND DUMB.

2. Institutions for, subject to visitation by state board of charities; state not to pay for inmates unless received pursuant to rules of board, Const. a. 8, §§ 11, 14, pp. 77-8; State Char. L., § 18, p. 3330.

DEATH.

3. Notice to be given to sec'y of state by co. clerk of death of member of congress, Elect. L., § 160, p. 3209.

4. If trustee of power of dies, execution of power to be adjudged by court, Real Prop. L., § 140, p. 3566.

DEBTS.

1. Included under personal property as used in Tax L., § 2, p. 3215.

2. Husband liable for ante-nuptial debts of wife, only to extent of property acquired from her, Dom. Rel. L., § 24, p. 3617.

3. Locality of debts for purposes of taxation, Tax L., § 4, sub. 13, § 8, pp. 3218, 3219.

DEEDS.

1. Short forms of, and construction of covenants in, Real Prop. L., §§ 216-23, pp. 3579-88; when deed deemed a mortgage, § 269, p. 3602. No greater estate to pass than grantor himself possessed, § 210, p. 3578.

2. On TAX SALES by comptroller, effect of, Tax L., §§ 131-2, p. 3265; co. treas., §§ 153-4, pp. 3273-4.

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2. Hounding deer, Fish., G. & F. L., § 44, p. 3785. Hunting, etc., in Kings, Queens and Suffolk counties, § 170, p. 3792. Traps and artificial lights prohibited, § 43, p. 3785.

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State board of dental examiners, how constituted; to license dentists; examination fees; revocation of license; registration of dentists with co. clerk, Pub. H. L., § 160, p. 845; §§ 161-2, pp. 3775-8; § 163, p. 850; violations, sale of diplomas, § 164, pp. 850-1.

DEPOSITS.

18. Of taxes by corporation on certiorari from decision of comptroller, Tax L., § 197, p. 3291.

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7. To enable resident aliens to hold lands, Real Prop. L., §§ 4-5, p. 3545.

DESCENT.

1. Every citizen capable of taking by, Real Prop. L., § 2, p. 3545. Alienism of ancestor no bar to inheritance, §§ 5, 7, pp. 3545-6; § 294, p. 3608. Certain Indians may inherit, § 9, p. 3546.

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WAREHOUSES.

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Lineal and collateral, abolished, Real Prop. L., § 217, p. 3579.

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On lands sold for taxes, Tax L., § 129, p. 3263.

WATER-WORKS CORPORATIONS.

1. Organization tax is one-eighth of 1 per cent. of capital stock authorized to issue, Tax L., § 180, p. 3280. Annual franchise tax, §§ 182-203, pp. 3281-94.

5. To supply water to the municipalities through which its mains may pass, Trans. Corp. L., § 81, p. 3838. May contract with villages to supply water for extinguishing fires, L. 1896, ch. 978, p. 3703.

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Standard of, Dom. Com. L., §§ 1-10, pp. 3507-9. Standard weights and measures to be stamped, § 12, p. 3510. State superintendent of weights and measures; duties of, §§ 11-12, 17, pp. 3509-11. Weight to be branded on barrel of meal, flour, beef or pork, §§ 71-2, 76-7, 90, pp. 3529, 3530, 3531. Of oysters, § 31, p. 3520. Of apple, pear and potato barrels, § 9, p. 3509. Weight of baled hay and hops, §§ 100-5, pp. 3532-3.

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WESTERN HOUSE OF REFUGE FOR WOMEN.

Management of, and commitments to, State Char. L., §§ 140-52, pp. 3360-7.

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2. Expectant estates may be devised, Real Prop. L., § 49, p. 3552. Devise to aliens, §§ 4-7, pp. 3545-6; R. S., p. 1876, § 4.

3. Proceedings for determining validity of will admitted to probate, Civ. Code, § 2653a, p. 3726.

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3. To deeds, Real Prop. L., §§ 242, 253-4, pp. 3593, 3596.

4. Incriminating questions to be answered in action brought by attorney-general against certain corporations, Civ. Code, § 1955, p. 3723. Testimony of deceased or insane witness as evidence, Civ. Code, § 830, p. 3716. Testimony of witness on preliminary examination in criminal cases, Crim. Code, § 204, p. 3739.

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2. Divorced woman may release inchoate right of dower, Real Prop. L., §§ 186-7, p. 3572. Not to serve liquor, Liq. Tax L., § 31, sub. f, p. 3490. Imprisonment of female convicts, Pen. Code, § 698, p. 3736.

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YEAR.

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YOUNG MEN'S AND YOUNG WOMEN'S CHRISTIAN ASSOCIATIONS.

10. Powers, duties and liabilities of directors, Mem. Corp. L., § 11, p. 3861.

12. Exempt from taxation on personal property and real property used exclusively for purposes of, Tax L., § 4, sub. 7, p. 3216; from taxable transfers law, § 220, p. 3295.